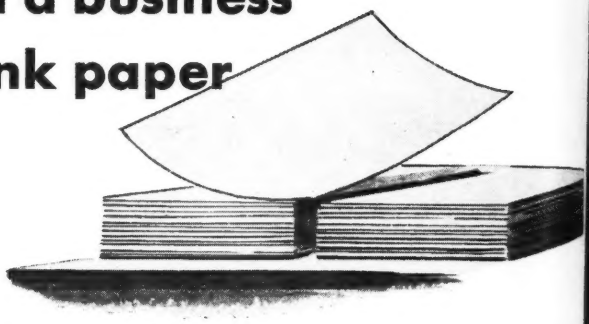
Public Utilities

FORTNIGHTLY

November 23, 1944

PUBLIC UTILITIES REPORTS, INC.
PUBLISHERS

How to run a business with blank paper



EVERY person in the United States is affected in one way or another by the paper shortage. Paper must be conserved. Yet, in the face of this emergency, the paper work of business is heavier than ever before. Business requires—and is consuming more paper.

There is a practical way for business to reduce consumption and *waste* of paper—*and at the same time do it profitably by simplifying many office operations so that time is saved, manpower conserved, labor lightened, errors reduced, and office routines speeded up.*

This can be done by the use of Multilith Systemats, a development new to general business, but which is already providing invaluable services to businesses large and small, to Government offices—and the Armed Forces.

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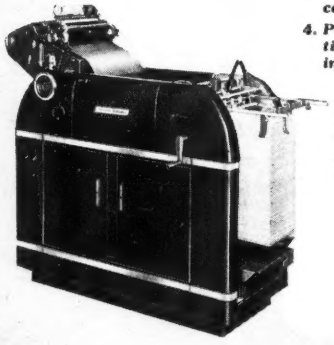
7. ***Preventing Discards because of "Errors in Copying".***
8. ***Utilizing Both Sides of Paper.***
9. ***Using Inexpensive Paper Stocks.***
10. ***Dispensing with Carbon Sheets.***



Let a Multigraph man explain the broad scope of Systemats and how they enable business to replace shelves of printed forms with stocks of blank paper. Phone the nearest local office or write Addressograph-Multigraph Corporation —Cleveland 17. Sales offices with service and supply departments in all principal cities of the world.

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SIMPLIFIED BUSINESS METHODS

PAPER PACKS A WAR PUNCH!

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Public Utilities Fortnightly

VOLUME XXXIV *November 23, 1944* NUMBER 11

Contents of previous issues of PUBLIC UTILITIES FORTNIGHTLY *can be found by consulting the "Industrial Arts Index" in your library.*

¶ *This magazine is an open forum for the free expression of opinion concerning public utility regulation and allied topics. It is supported by subscription and advertising revenue; it is not the mouthpiece of any group or faction; it is not under the editorial supervision of, nor does it bear the endorsement of, any organization or association. The editors do not assume responsibility for the opinions expressed by its contributors.*

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Pages with the Editors

SEVERAL weeks ago when the United States First Army, under the command of Lieutenant General Hodges, was thundering at the door of the ancient German border town of Treves, the world was reminded that it was the birthplace and long the residence of the famous German socialist and philosopher, Karl Heinrich Marx. It was Marx who threw the left-wing intelligentsia of his day (and ever since) into almost cultish zeal with his doctrine of "surplus values."

As many readers may recall—at least vaguely—from days of student reading of, or subsequent references to, "Das Kapital," Marx evolved the idea that any value which might arise from the manufacture of a salable product from its state as raw material, over and above actual operating expenses, should belong to the worker—not the manufacturer. To prevent the worker from becoming, in turn, a capitalist by exploiting this "surplus value" for his personal aggrandizement, Marx postulated his famous theory of state control of production so that all such surplus values might be channeled into a common pool for the common benefit of all workers ("from each, according to his ability; to each, according to his need").

THE western world generally has not accepted this theory of resolving all "surplus values" in favor of society (and at the expense of productive enterprise) except to a limited and debatable extent in the form of laws in the nature of social security legislation and so forth. Any nation, such as our own, which has grown and thriven upon a system of private competitive enterprise, must retain some incentive (profit motive) for the entrepreneur to invest. This is the converse of the Marx idea, in that the profit motive system resolves all such "surplus values" in favor of the managerial producer. This is on the theory that such incentive results in more and more production at less and less cost for the benefit of everybody, including producer and worker and investor (if the latter happens to be a third party). It has worked out pretty much that way too, especially in the United States.

JOE BOND

A national economy cannot continue to exist half slave and half free.

(SEE PAGE 663)

TAKING the broad view, it is not difficult to conceive that such "surplus values" will increase as a nation increases its production, under *either* system, Marxism or private enterprise. Whether it would grow faster one way than the other might be debatable. But sum total values in Soviet Russia, for example, have certainly increased since the Bolshevik revolution. And we know, of course, that dollar values of real estate and commerce have multiplied many fold in our own land since the days of a little more than a century ago when the entire Mississippi-Missouri valley area of the Louisiana Purchase was surrendered by Napoleon Bonaparte for a paltry $15,000,000.

BUT it is not so easy to see how we can *mix up* these theories very well within the same national economy. To place one industry upon a Marxist basis of regulation while other industries are permitted to go on operating under a profit motive system of private enterprise is likely to condemn the former to an investment "strike" and government ownership by default. The investor is likely to hesitate to risk his dollar in a business where it can be lost but can never increase under any circumstances of prosperity or success, while he still has a choice of placing it elsewhere with every opportunity for such an increase in his dollar investment.

THIS is the serious economic problem posed by JOE BOND, former member of the Arkansas Department of Public Utilities and now practicing certified public accountant of Little

Rock, Arkansas. MR. BOND sees, in the current regulatory trend towards "strict original cost" accounting for public utilities (or "above original cost"), a movement to resolve all "surplus values" which might accrue to successful operation of utilities in favor of society as distinguished from the investor-owner of such enterprise. This could happen, of course, only if original cost accounting, as a bookkeeping proposition, were translated into rate regulation in fact, without any allowance for enhancement of property value — even through the process of sale under arm's-length bargaining conditions at a purchase price in excess of so-called original cost.

HE concludes that no national economy can exist "half slave and half free" (*i.e.*, half socialist and half private enterprise). BOND develops the idea that such regulatory technique might spread to other lines of business and eventually undermine, dilute, and finally dissolve private enterprise as the basis of economic existence in the United States. Perhaps some may think it an alarmist approach; but at any rate it is thought-provoking. In view of the current interest in original cost accounting theories, we pass it along for what it is worth.

WE have often wondered what it must be like to be a member of a utility repair and maintenance crew in a city such as London under conditions of the blitz by the Luftwaffe in 1940 and 1941, or the more recent robot bomb terror. To engage in the perilous job of patching up the damaged gas mains and other shattered utility facilities in one bomb crater while two or three more are being blasted within earshot must be discouraging indeed. But the English talent for organization, not to mention individual heroism, overcame these psychological as well as physical obstacles.

THE article commencing on page 682 of this issue by S. EVERARD is a stirring description of a gas man's experience in London under the blitz. MR. EVERARD is manager of The London Regional Gas Centre, which is composed of a number of operating gas companies in and about the metropolitan area of the city of London.

ARNOLD HAINES, Washington free-lance writer, made an interesting tour of public utility central office display windows between Philadelphia and Washington some weeks ago. He wanted to see for just what purpose these utilities were using their display windows, if they were using them at all. The article beginning on page 674 is not only an enlightening analysis of his survey but contains some worth-while suggestions on what some utility companies are doing to gain the most value in terms of good public relations from the use of their display window space.

SPEAKING of surveys reminds us of the tribulations which beset the various poll takers during the recent political elections. With all due respect for "scientific sampling," there does not seem to be any infallible short cut prior to election day which does not lie under the shadow of a "margin of error." A so-called "barometer" county in western Maryland had a perfect record of voting with the winner in presidential elections for the last fifty years. But something happened last November 7th when it turned up for Dewey. Natives are still trying to explain it.

WE have heard some tall tales about public utility service in the span of our editorial experience. But we have never even dreamed of such strange utility operations as appear in the new Olsen and Johnson show, "Laughing Room Only," opening in New York city. Believe it or not, this show contains a locomotive which runs out on the stage and sprays coal all over the audience. It has telephones which give milk, coffee, and even peanuts. It has electric floor lamps which turn out to be dancing girls.

AFTER seeing a rehearsal of this show we can sympathize with the returning veterans in our Patterson cartoon on page 705 of this issue, who are wondering if the pretty girl employees of the gas company have not managed to make the gas smell like Chanel No. 5 in their absence.

AMONG the important decisions preprinted from *Public Utilities Reports* in the back of this number, may be found the following:

ELECTRIC rate schedules are approved by the Wisconsin commission as representing a forward step in a program for modernization, simplification, and reduction of rates and elimination of obsolete and discriminatory features. (See page 193.)

THE Utah commission discusses its authority over the accounting methods and accounts of each public utility under its jurisdiction. (See page 202.)

COMMISSIONER Buchanan of Pennsylvania discusses, in a dissenting opinion, the lack of evidentiary value of reproduction cost testimony in determining a rate base. (See page 214.)

THE California commission states that a utility's obligation to pay an annual franchise charge rests on contract and that such a charge is neither a tax nor a license. (See page 252.)

THE next number of this magazine will be out December 7th.

The Editors

In This Issue

In Feature Articles

In Financial News

In What Others Think

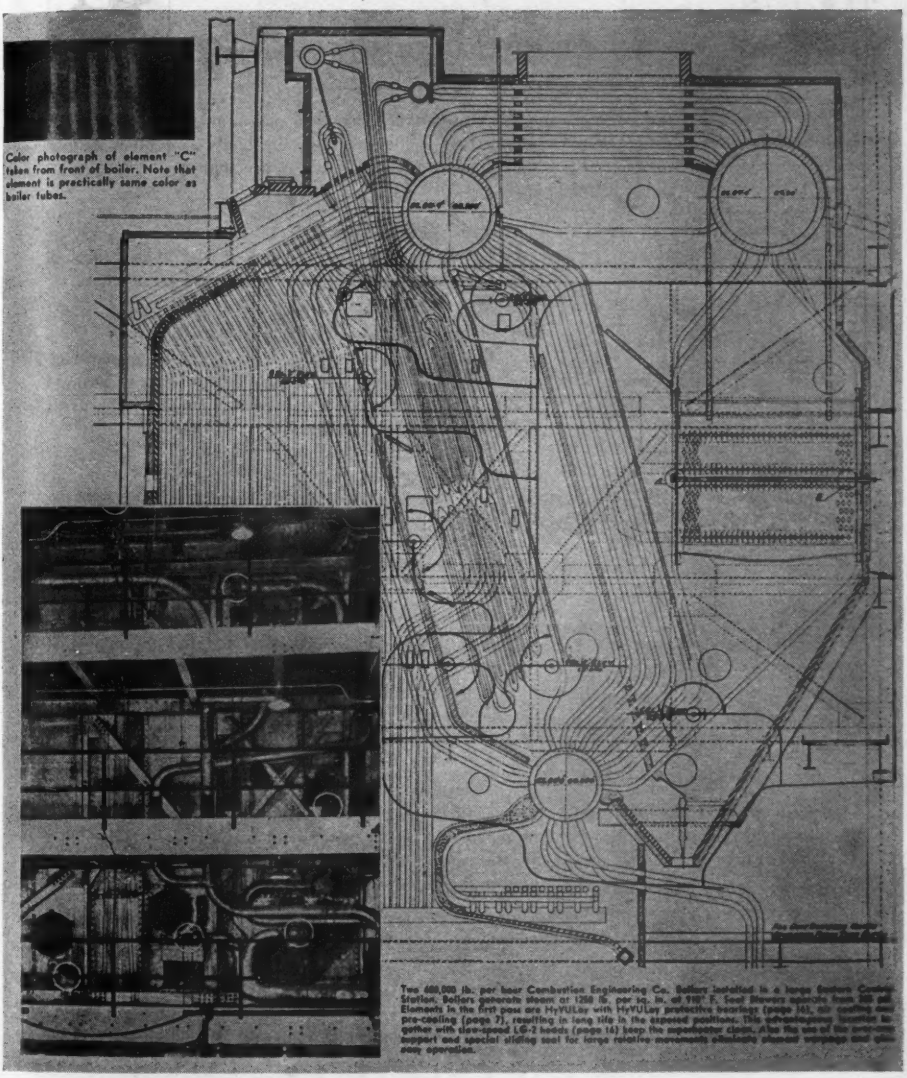
In The March of Events

In The Latest Utility Rulings

PREPRINTS FROM PUBLIC UTILITIES REPORTS

Various regulatory rulings by courts and commissions reported in full text, pages 193-256, from 55 PUR(NS)

VULCAN ENGINEERED SOOT BLOWER INSTALLATIONS



Color photograph of element "C" taken from front of boiler. Note that element is practically same color as boiler tubes.

Two 400,000 lb. per hour Combustion Engineering Co. Boilers installed in a large Eastern Central Station. Boilers generate steam at 1250 lb. per sq. in. at 910° F. Soot Blowers operate from 600 psi. Elements in the first pass are Hy-YU-Loy with Hy-YU-Loy protective bearings (page 16), air cooling and pre-cooling (page 7), resulting in long life in the exposed positions. This self-aligning feature together with slow-speed LG-2 heads (page 16) keep the superheater clean. Also the use of the extension support and special sliding seal for large relative movements eliminate steamed warpage and gives easy operation.

The new VULCAN catalog fully describing VULCAN equipment appears in the 1944 Sweets, and a copy is available on your request.

VULCAN SOOT BLOWER CORPORATION, DU BOIS, PENNA.

Remarkable Remarks

"There never was in the world two opinions alike."
—MONTAIGNE

WILLIAM L. BATT
Vice chairman, War Production Board.

"Depression, like war, is a plague that spreads terribly. Depression begets war, on the body of foolish nations that think prosperity is a treasure that can be fenced."

HENRY J. KAISER
Industrialist.

"Peace is a state of mind. It is based on the sense of security. There can be no peace in the individual soul unless there is peace in the souls of all with whom we must live and work."

EDITORIAL STATEMENT
Farmers National Union.

"All the world is looking forward to a peace which goes beyond the mere cessation of hostilities and becomes a thing lived, enjoyed, and depended upon by the great mass of people everywhere."

THOMAS ROY JONES
President, New Jersey State Chamber of Commerce.

"Labor organization is becoming big business, one of the biggest in the country, and is, through all the devices of monopoly, attempting to make itself still bigger business. It is grabbing for power, both economic and political."

MILES F. HOLLISTER
Economist and business executive.

". . . the trouble with bureaucracy is that it gets beyond the control of its makers. By its very nature, it grows in size and momentum until it gets beyond the control of any one man or group of men. Like the barnacles on a ship, it gathers its kind."

ELSA GRAVES
Chairman, YWCA National Industrial Council.

". . . once the idea of scarcity and few jobs is accepted, there will be no end to the struggle between the veteran in uniform and the veteran in overalls—both male and female. We women resent being mere reserve labor, to be drawn upon or neglected at will."

SAM RAYBURN
Speaker, U. S. House of Representatives.

"There are those who say that we would lose our sovereignty if we joined with other nations in keeping the peace. Such statements may be made to confuse or to deceive, but the truth is that the power to make international commitments is the essence of sovereignty."

J. EDGAR HOOVER
Director, Federal Bureau of Investigation.

"We must preserve and teach democracy now for the future. All now realize that in many quarters we have failed in the past. Before Pearl Harbor, the lack of patriotic and militant sentiment and loyalty, together with a too evident attitude of selfishness, discouraged timely preparation for defense."

S. W. MURPHY
President, Electric Bond and Share Company.

"Our [Electric Bond and Share] companies represent about one-eighth of the total electric utility industry in the United States and supply as much electricity as the total production of all Great Britain's utility plants, both privately and publicly owned."

JAMES WILLIAM FULBRIGHT
U. S. Representative from Arkansas.

". . . why is it that we do not attract the best talent we produce into the service of our country in peace, as well as in war? The root of our trouble lies in the attitude of the citizens of this country toward politics in general, and politicians in particular."

IVAN WRIGHT
Professor of economics, Brooklyn College.

"Take away profits and you take away the incentive to produce. Take away profits and you take away jobs. Take away profits and you take away the urge to keep costs down and to offer better quality at lower prices. Take away profits and you take away the private enterprise system. Regulations unduly limiting profits thus go to the heart of our economic system."

EARL WARREN
Governor of California.

"There has been progress in every decade of American history. Progress is an American habit. We do not propose to deny the progress that has been made during the last decade. Neither do we aim to repeal it. Whatever its source, if it is good, we will acknowledge it. If it is sound, we will build on it. If it is forward-looking, we will make use of it as we go forward from here."

MATTHEW WOLL
Vice president, American Federation of Labor.

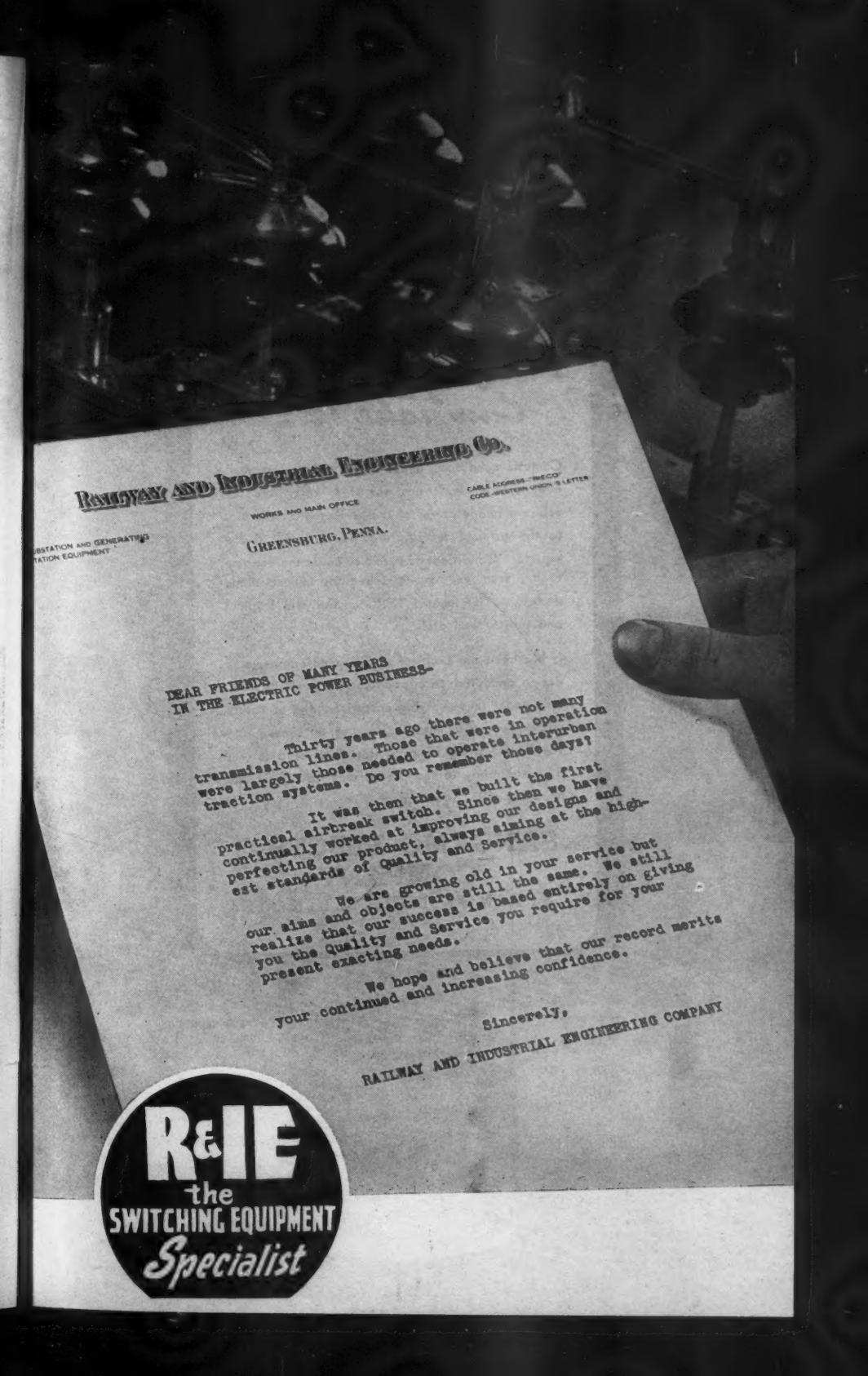
"All signs point to a concerted assault on the American organized labor movement as soon as the war is over. . . . Labor today is under fire from hostile legislators, biased radio commentators, virulent columnists, all trumpeting its alleged sins of omission and commission. Even the nearly 3,000,000 trade unionists in the armed services are being aroused against organized labor."

MAURY MAVERICK
Chairman, Smaller War Plants Corporation.

"America has made up her mind to save free enterprise. At least, everybody says so. Let's prove it. I say the only way to save it is to give the little man first right at reconversion, plus some scientific know-how in his plant, some money loaned him in his pocket, the easing of the tax load on his sore and bending back, and a cart load of raw material with which to start work again."

WILLIARD H. DOW
President, Dow Chemical Company.

"We today, without thought of our words, speak of the 'government' or of 'Washington' as a ruling power, and there are many who would propitiate that power in much the way that the courtiers of old are said to have fawned on their monarchs. Our forefathers simply would not have known how to do that sort of thing. They did not depend upon a government. The government depended on them."


RAILWAY AND INDUSTRIAL ENGINEERING CO.
WORKS AND MAIN OFFICE
CABLE ADDRESS—RAILCO
CODE—WESTERN UNION 5 LETTER
BSTATION AND GENERATING
TATION EQUIPMENT
GREENSBURG, PENNA.
DEAR FRIENDS OF MANY YEARS
IN THE ELECTRIC POWER BUSINESS-
Thirty years ago there were not many transmission lines. Those that were in operation were largely those needed to operate interurban traction systems. Do you remember those days?
It was then that we built the first practical airbreak switch. Since then we have continually worked at improving our designs and perfecting our product, always aiming at the highest standards of Quality and Service.
We are growing old in your service but our aims and objects are still the same. We still realize that our success is based entirely on giving you the Quality and Service you require for your present exacting needs.
We hope and believe that our record merits your continued and increasing confidence.
Sincerely,
RAILWAY AND INDUSTRIAL ENGINEERING COMPANY
R&IE
the
SWITCHING EQUIPMENT
Specialist

Sangamo Capacitors Can Take It!

Climatic conditions, under which various communications equipments are operated, vary from the sub-zero temperatures of the northernmost climates to the tropical temperatures encountered at the equator. Conditions of humidity cover the extreme range; from the dry arid regions of the many deserts, to the almost 100% humidity in tropical and sub-tropical atolls.

It has been the problem of Sangamo engineers to design and produce capacitors that perform faithfully under these varying conditions, and so assure vitally needed communications at all times.
The wide variety of capacitors illustrated insures the availability of the proper unit for almost any mica capacitor requirement.

SANGAMO ELECTRIC COMPANY
SPRINGFIELD, ILLINOIS

Save to Win
with these four simple rules
of battery care:

1. Keep adding approved water at regular intervals. Most local water is safe. Ask us if yours is safe.
2. Keep the top of the battery and battery container clean and dry at all times. This will assure maximum protection of the inner parts.
3. Keep the battery fully charged—but avoid excessive over-charge. A storage battery will last longer when charged at its proper voltage.
4. Record water additions, voltage, and gravity readings. Don't trust your memory. Write down a complete record of your battery's life history. Compare readings.

If you wish more detailed information, or have a special battery maintenance problem, don't hesitate to write to Exide. We want you to get the long-life built into every Exide Battery. Ask for booklet Form 3225.

Exide
CHLORIDE
BATTERIES

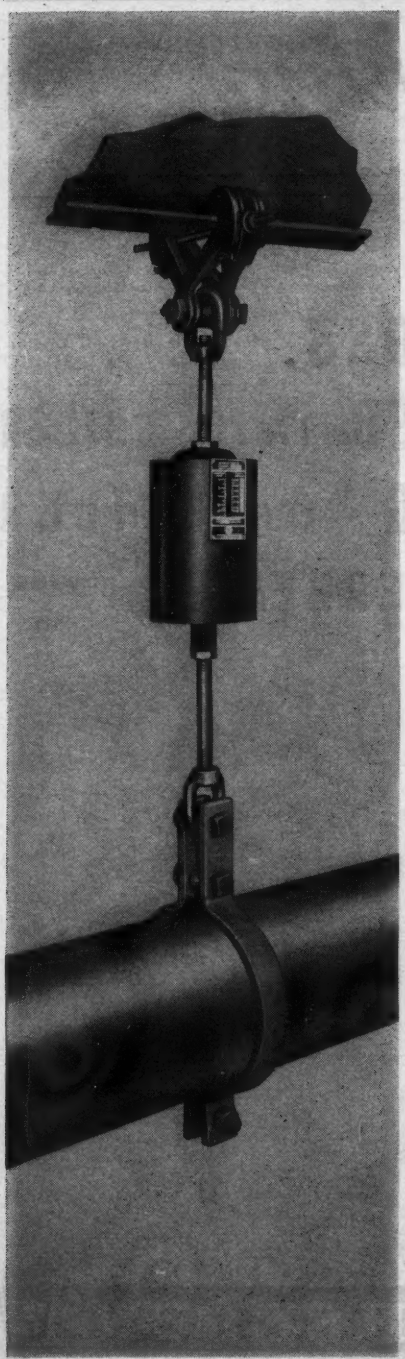
. . . is a vital principle of utility operation!

Conservation of materials is no new story to the men who operate public utilities. With thrift and efficiency they have always planned for conservation.

They've squeezed the last ounce of use out of materials and equipment in their care . . . and today, that need is intensified.

One helpful principle to follow is that of "Buy to Last—Save to Win." Buy quality products and equipment, then care for it to avoid needless replacement. That conserves raw materials, labor, and space in factories. It frees these productive elements for essential war production.

THE ELECTRIC STORAGE BATTERY CO.
Philadelphia
Exide Batteries of Canada, Limited, Toronto



Save Engineering Time

WITH NEW GRINNELL *Pre-Engineered* SPRING HANGERS

1. Compute the load
2. Select the required stock size

When spring hangers for modern, flexibly supported piping systems are "tailor-made" for each load condition, a lot of scarce engineering and drafting man-hours are required in designing. The new Grinnell Spring Hanger will save this time – it is "pre-engineered for the job." The capacity you need is conveniently "packaged"– one of 14 stock sizes.

MINIMIZES CHANGES IN PIPE SUPPORTING FORCE

ALL-STEEL WELDED CONSTRUCTION MEETS PRESSURE PIPING CODE

UNIQUE SWIVEL COUPLING PROVIDES ADJUSTMENT AND ELIMINATES TURNBUCKLE

COMPACT—REQUIRES MINIMUM HEADROOM

INSTALLATION IS SIMPLIFIED BY INTEGRAL LOAD SCALE AND TRAVEL INDICATOR

14 SIZES AVAILABLE FROM STOCK

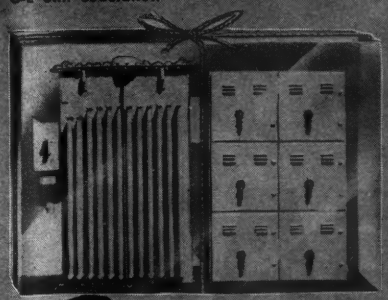
EASY SELECTION OF PROPER SIZE FROM SIMPLE CAPACITY TABLE

14 Sizes with a Load Range from 84 lbs. to 4700 lbs.

COMPLETE DETAILS and engineering data on the Fig. 268 Pre-Engineered Spring Hanger are included in this new folder. Keep a copy on hand for ready reference. Write today. Grinnell Co., Inc., Executive Offices, Providence 1, R. I. Branch offices in principal cities.

GRINNELL

WHENEVER *Piping* IS INVOLVED



Packaged Successor TO Christmas-tree design

150-kva substation built piecemeal

CAPACITY WAS DOUBLED *at less than revamping cost - - - via STANDARDIZATION*

HERE'S a clear-cut example from the *industrial* field that shows what repetitive manufacture is accomplishing. It helps explain, in terms of dollars saved for the buyer, why General Electric is urging a wider application of this principle in the manufacture of heavy power apparatus.

Greater output made it imperative for this lumber mill to double its substation capacity. Maintenance was high, interrupting capacity inadequate. The substation structure impeded yard traffic. Making room for three new 100-kva transformers and accessories presented a difficult problem.

Then, as an alternative, G.E. recommended the installation of a self-contained, indoor unit substation. When the costs were analyzed, the new 300-kva unit substation was proved less expensive than the revamping plan.

Last report: "Company is enthusiastic over unit substations and intends to install more."

Although simpler than the problems you encounter, this case is further evidence of what repetitive manufacture can do to increase the economic worth of *power apparatus*. In making your plans for the future, will you work with us to broaden the scope of this program? *General Electric Company, Schenectady 5, N. Y.*

GENERAL ELECTRIC

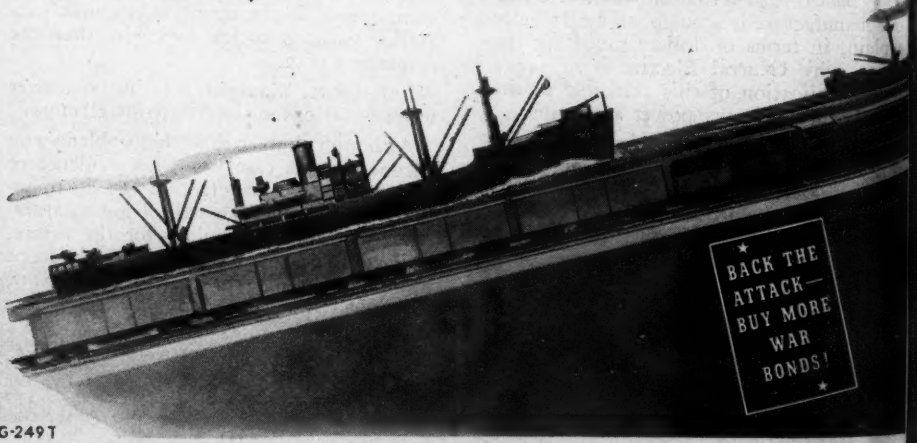
Rebuilding a World for STEAM

The tough tasks of steam plant rehabilitation and development, will fall on engineers who are now serving their country in the armed forces, or in the never-ending battle with power-plant problems in war plants and in public utility plants supplying power to war plants. In this they are applying their engineering knowledge and skills to the early conclusion of hostilities.

When the war will have ended and Victory is ours, these engineers will re-direct their knowledge and skills from war-making activities to the production of steam power for peaceful pursuits, utilizing whatever of their background of war experience is applicable to future industrial development.

We of Babcock & Wilcox have implicit confidence in their resourcefulness, confidence in their ability to continue overcoming almost impossible assignments. Serving other engineers has also kept us on our mettle, as evidenced by important B&W contributions to the continued evolution of practice in steam generation.

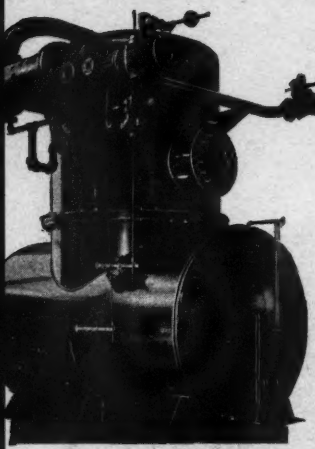
While the war effort has first call on your industry's time and resources, you undoubtedly have given some thought to the postwar power-plant problems that will confront you, as it is never too early for engineering planning. B&W engineers will gladly cooperate with you to the utmost of their ability, consistent, of course, with war demands on their time.



G-249T

Deaerating heaters

tailored to fit



Typical medium-size vertical deaerating heater mounted on a horizontal storage tank. Vent condenser on side to save headroom.

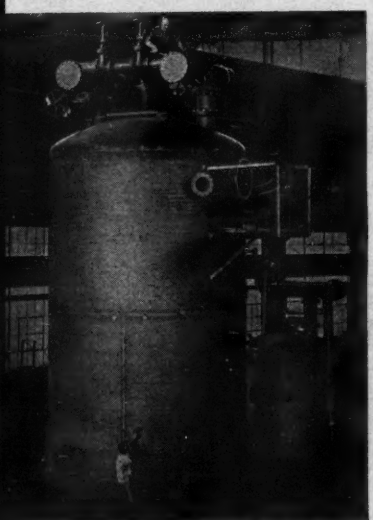
Deaerating feedwater heaters must be fitted to many factors other than required capacity and operating conditions. The desired amount of storage may mean a large single-shell unit, or a heater with a separate storage tank. Space limitations and available access to buildings must be considered. Railroad clearances limit the size and shape of large units. And with each variation in shape, the critical design areas, volumes, tray and water distribution, piping arrangements, and controls must be proportioned for dependable operation and maximum feedwater heating and deaerating performance.

How Elliott engineers fit Elliott deaerating heaters to their jobs is shown in the photos on this page. If you have a heater problem, particularly one that looks tough, talk it over with these Elliott specialists.

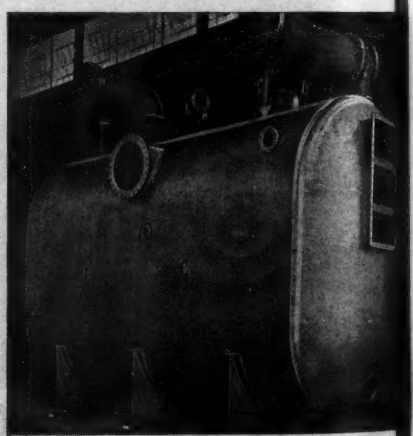
ELLIOTT COMPANY

Deaerator & Heater Division, **JEANNETTE, PA.**

DISTRICT OFFICES IN PRINCIPAL CITIES



Two vertical deaerating heaters. Large unit has twice the capacity of the smaller, and eight times the storage capacity. It is up to railroad car limitations—12 ft. by 27 ft. high.



This 1,500,000-lb.-per-hr. deaerating heater was shaped to fit into limited width in a big utility station.

N-977

ELLIOTT Company

STEAM TURBINES • GENERATORS • MOTORS
CONDENSERS • FEEDWATER HEATERS AND DEAERATORS • STEAM JET EJECTORS
CENTRIFUGAL BLOWERS • TURBOCHARGERS FOR DIESEL ENGINES • TUBE CLEANERS
STRAINERS • DESUPERHEATERS • FILTERS

Utilities Almanack

Due to wartime travel restriction, conventions listed are subject to cancellation.

NOVEMBER

23	Th	¶ *American Standards Association will hold meeting, New York, N. Y., Dec. 8, 1944.*
24	F	¶ *Technical Valuation Society will hold annual forum and business meeting, New York, N. Y., Dec. 16, 1944.*
25	Sa	¶ *American Water Works Association, New York Section, will hold meeting, New York, N Y., Jan. 17, 1945.*
26	S	¶ *American Institute of Electrical Engineers will hold meeting, New York, N. Y., Jan. 22–26, 1945.*
27	M	¶ *Oklahoma Telephone Asso. opens session, Oklahoma City, Okla., 1944.* ¶ *American Society of Mechanical Engineers starts session, New York, N. Y., 1944.*
28	Tu	¶ *Insurance Economics Society of America will hold annual meeting, Chicago, Ill., Feb. 7, 8, 1945.*
29	W	¶ *American Society for Testing Materials and American Institute of Mining and Metallurgical Engineers convene, Phialdelphia, Pa., 1944.*
30	Th	¶ *American Water Works Association, Minnesota Section, will hold meeting, Mar. 9, 10, 1945*

DECEMBER

1	F	¶ *Texas Telephone Association will hold meeting, Dallas, Tex., Mar. 12, 13, 1945.*
2	Sa	¶ *Kansas Telephone Association will hold meeting, Topeka, Kan., Mar. 15, 16, 1945.*
3	S	¶ *Iowa Independent Telephone Association will start session, Des Moines, Iowa, Apr. 3, 4, 1945.*
4	M	¶ *Nebraska Telephone Association will convene, Lincoln, Neb., Apr. 5, 6, 1945.*
5	Tu	¶ *United States Independent Telephone Association will hold spring executives' conference, Chicago, Ill., Apr. 10, 11, 1945.*
6	W	¶ *National Association of Manufacturers starts meeting, New York, N. Y., 1944.*

From Elsie Hafner, N. Y.

Brooklyn Bridge

By Gurdon Howe

Public Utilities
FORTNIGHTLY

VOL. XXXIV; NO. 11 NOVEMBER 23, 1944

FPC Concept of Original Cost

The author believes that the commission's idea of value is not reconcilable with the accounting, economic, and legal concepts of property and property rights which, since the birth of this nation, have governed and influenced its "free enterprise" system of economy.

BY JOE BOND

UNDER Part II of the Federal Power Act of August 26, 1935, the Federal Power Commission was granted regulatory powers over the transmission and sale of electric energy in interstate commerce. The act declared that such transactions were *"affected with a public interest,"* and, that being in *"interstate commerce,"* Federal regulations were "necessary in the public interest." Under these regulatory powers this authority sits as umpire between the interests of the public, or society, and those of the owners, or creators, of this segment of American industry. As such an umpire this authority can dictate the division of the benefits of ownership and operation of this industry, as between the public, or society, and the owners, and, by such dictatorial powers, can control, or limit, the present value of this entire industry to its owners or creators.

The act states that the characteristics of this industry, which make Federal control necessary, are that it is "affected with a public interest" and is

engaged in "interstate commerce." With the present trend being toward more and more Federal control of business it is well to remember that there are few, if any, business enterprises that are not "affected with a public interest"; that current court decisions indicate there are few, if any, business transactions that could not be construed as being in interstate commerce; and that a business enterprise need not be a "public utility" to be subjected to regulation.[1]

It is apparent, therefore, that these Federal regulatory powers, now exercised by the Federal Power Commission, which are the immediate concern of the electric industry, could well become the concern of American industry as a whole. The economic philosophy underlying the regulatory policy of the Federal Power Commission could, by the extension of Federal control to all industry, become the basic philosophy of our American economy. By the extension of such control, all property and property rights, all benefits of private ownership, and all rewards for individual initiative, or ingenuity, could be measured by the same economic "yardstick" now applied, by the Federal Power Commission, to the electric industry. We have had ample evidence that many "planners" high in the councils of government consider extension of Federal control to other industries as "necessary to the public's interest"; therefore, the "length" or equity of this "yardstick" should be of much concern to every American businessman.

A REGULATORY policy applied to any segment of American industry should have the same basic concept of value as that which underlies our capitalistic form of economy. Suppose we examine the regulatory philosophy of the Federal Power Commission, as revealed in the "original cost" program now being pursued, and see if such philosophy, with its basic concept of value, is reconcilable with the accounting, economic, and legal concepts of property and property rights which, since the birth of this nation, have governed and influenced its "free enterprise" system of economy.

The first step in this program was the adoption by the Federal Power Commission, June 16, 1936, of a uniform system of accounts which provided for an analysis of the plant accounts of all electric utilities. The distinguishing feature of this required analysis is that the units of property, composing the plant account, or the physical component of the earning entity, be stated, in the accounts, at "original cost." This cost was defined in the instructions as the cost installed to that person who first placed such property in service. All costs incurred by the accounting company to acquire such property, which are in excess of the "original cost," so defined, are segregated in an adjustment account entitled Account 100.5—"Electric Plant Acquisition Adjustments." All recorded costs in excess of the total cost to acquire, or in excess of the "original cost" plus those costs segregated in "Account 100.5," are segregated in Account 107—"Electric Plant Adjustments."

The second step in this program was an order by the Federal Power Com-

[1] "Any Business Can Be Made a Public Utility," by Joseph P. O'Connell, PUBLIC UTILITIES FORTNIGHTLY, Vol. XXXIV, No. 4, p. 217, Aug. 17, 1944.

mission, issued May 11, 1937, which required all electric utilities under its jurisdiction to file, with this authority, a reclassification of their accounts together with an "original cost" study of their electric property.

The third step in this program consists of the "original cost" proceedings which follow the filing by the utilities of the "original cost" studies. It is in these proceedings that this authority makes clear the *regulatory purpose* of the "original cost" provisions.

IT is at this point that we encounter confusion of the accounting function and the regulatory function. Aside from the important controversial question as to whether the standard of original cost should be based on cost to the accounting company or cost when first devoted to public service (to be presently discussed), there is no criticism here intended of the use of original cost as the criterion for entering property items for accounting purposes only.

As a matter of fact, the FPC has made considerable use of the argument that utility attacks in court on its accounting procedures were premature to the extent that they involved mere bookkeeping transactions. Later on, however, we may find these bookkeeping transactions assume a conclusiveness for regulatory purposes which should never have been created through the instrumentality of installing the original cost accounting system. This translation of an accounting system into a regulatory finding is, in effect, an abdication of the regulatory function by retroactively placing the responsibility for regulatory findings on an accounting system which has, or should have, an entirely different purpose.

In other words, the FPC, in its rôle of arbiter as between interests of the public, or society, and those of the owners and creators of the utility industry, effects a division of the benefits arising from the ownership and operation of the utility industry, as between such owners and the public, or society. Here we find that this analysis of cost, or of the sacrifice made to obtain possession of utility property, becomes, to this authority, a measure or limit to the benefits of possession; *the accounting results become an economic finding.*

WE find that this authority, in its determination of the value to its owners of the utility industry, discards entirely the "capitalistic" or "free enterprise" concept and adopts, in its stead, a concept of value which is the basis for socialistic or communistic theory of economy. An analysis of the effect of these orders on the ownership equity of the utility industry will make

¶ "WITH *the present trend being toward more and more Federal control of business it is well to remember that there are few, if any, business enterprises that are not 'affected with a public interest'; that current court decisions indicate there are few, if any, business transactions that could not be construed as being in interstate commerce; and that a business enterprise need not be a 'public utility' to be subjected to regulation.*"

this clear to all who recognize the rights of a private *owner* as distinguished from those of a mere creditor of an enterprise.

An example of the concept, of this authority, of the property rights of the private owners of the electric industry is found in Opinion and Order No. 88, issued February 4, 1943, in the matter of Northern Natural Gas Company,[2] wherein we find a statement which reads as follows:

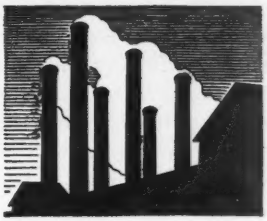
> Recent decisions and opinions of this commission, disposing of formal rate cases before it, have *definitely established the principles* which this commission considers *sound* and *appropriate* for the *determination* of the reasonableness of *rates* for *electricity* and natural gas. These principles may be summarized as a *reasonable return upon the original cost* of the property *less* the *depreciation* and depletion therein plus an allowance for working capital. The *reduction in rates* made effective by the attached order *will reduce* the *earnings* of Northern *in conformity* with these principles. (Italics supplied.)

THE above excerpt constitutes an outright, unqualified statement that it is an "established" regulatory policy of this authority that the future earnings of a utility industry be limited to a fair return on the depreciated original cost of the physical component of this industry. Remember—the "original cost," enthroned in this statement of "principles" as a rate base, or as a limit to the benefits of ownership, does not represent the cost or sacrifice made by such owner to acquire possession of the property. Total cost of acquisition includes all those costs set aside in Account 100.5, which, under this peculiar economic philosophy, are excluded from the earning base and indicted as a worthless or fictitious asset.

If the Federal Power Commission is successful in excluding all actual costs, segregated in Account 100.5, from the earning base, these costs actually become at that time a worthless asset. If all values arising from intangible attributes are construed as social values, the benefits of which accrue to society, they cease to become a property, or property right, of the individual. Therefore, costs incurred in the recognition of such values no longer represent the cost of an earning, or a valid asset. Orders providing for the adjustment of accounts, flowing from these same proceedings, show, however, that this authority goes much further than an indictment of the future earning power of these values. Orders issued by the Federal Power Commission, providing for the disposition of these costs segregated in Account 100.5, show that it is the opinion of this authority that values arising from intangible attributes have *never* been a property or property right of the property owner, but, instead, have *always* been social values.

These accounting orders, which require the amortization of these actual arm's-length costs, either against existing surplus or through Account 537, indict such costs as imprudent or improper expenditures. Such an indictment must rest on the assumption that intangible values, or attributes, have never been a property right; that the original owner, who installed the physical component of an earning entity, had no property, or property right, to convey except the *depreciated cost* of such physical component. It would follow that subsequent purchasers who recognized such values in the purchase price (and to the extent of such recognition) made an imprudent or im-

[2] 47 PUR(NS) 74.



Benefits Arising from Ownership

". . . the FPC, in its rôle of arbiter as between interests of the public, or society, and those of the owners and creators of the utility industry, effects a division of the benefits arising from the ownership and operation of the utility industry, as between such owners and the public, or society. Here we find that this analysis of cost, or of the sacrifice made to obtain possession of utility property, becomes, to this authority, a measure or limit to the benefits of possession; THE ACCOUNTING RESULTS BECOME AN ECONOMIC FINDING."

proper expenditure. Under no other assumption can arm's-length cost be excluded, both from the earning base and from recovery in rates charged, and treated as an outright charge against the ownership equity or the owner's interest in earnings.

So, we find that the economic "yardstick" used by this authority to measure the benefits accruing to the private ownership of an electric enterprise consists of a "fair return" on the depreciated "cost to install" of the physical component of such enterprise. Use of such a "yardstick" relegates the present owner to a mere *credit* position with his "receivable" being measured, not by the sacrifice made by such owner to acquire possession, but, instead, by the sacrifice required of that person who originally installed the physical units of property. Under this concept, this arbiter, as between the interests of the public, or *society,* and those of the *ownership* of the electric industry, assigns to society *all* the *benefits* of ownership, leaving to the actual owners only a *creditor's return,* or a *creditor's relationship* to a "publicly owned" industry.

THIS economic philosophy is entirely foreign to a capitalistic economy and, therefore, cannot be reconciled with the accounting, economic, and legal concepts of property or property rights which have governed or influenced our American system of "private enterprise." Let's take a look at these established views.

Accounting rules and principles were developed in full recognition of the fact that, under a capitalistic form of economy, cost and value are two separate and distinct factors. The accountant realizes that you incur *cost* to acquire *value;* that you make sacrifices in order to obtain benefits; that all sac-

rifices do not result in compensatory benefits; and that all benefits do not require comparable sacrifices. The accountant realizes that, while cost is fixed and determinable, value, representing the power of a possession to confer benefits, is determined by the wisdom and efficiency with which the possession is used. *Accountancy, therefore, deals solely with the measuring, recording, and interpreting of these sacrifices or cost. Measuring the value, or benefits, side of this equation has been the field of the appraiser or economist.*

It must be remembered, therefore, that in accounting for the purchase of fixed assets, or of an earning or "going" concern, the accountant does not attempt to record all property, property rights, or values, but, instead, deals solely with the sacrifice made to obtain possession of such property or property rights. While the accountant recognizes the existence and validity of benefits in excess of the cost, or of the sacrifice made, his job is solely to record actual cost until such time as these benefits are realized through earnings or through sale. But this does not mean that the accountant denies the possessor the rights to such benefits or the right to transfer them to others. As an example, the accountant's insistence that "cost" be the "balance sheet" basis for "finished goods" of a manufacturing concern does not imply that he considers such cost a limit of value, or of the property right of the concern in such goods.

ORTHODOX accounting for the acquisition cost of a "going concern" recognizes the fact that this cost acquires only one property right; that is, the right to the future earning power of this concern. The accountant realizes that the value of this right will be determined by many economic factors, or variables, the influence or impact of which could only be a matter of estimate. He, therefore, makes no attempt to record value, but, instead, limits the records to "cost." To the accountant this means the sacrifice of the accounting company to acquire the concern, not the cost of the same property to some predecessor in title. The accountant sees the entire cost to acquire as an estimate of the present "going" or "operating" value of the earning entity. His analysis of this cost recognizes the fact that future realization of this estimated value will require the preservation, through replacements, of the physical component of the earning entity; therefore, he provides for the segregation of such an amount of this cost as measures the replacement value.

This segregated cost becomes the basis for future charges to operations for the preservation of the earning entity. It's a starting point. It keeps before the management a true picture of how many chips the investors bought, so to speak, when they went into the game or business. Costs remaining after such segregation represent to the accountant the estimated present value of intangible attributes created or acquired by former owners, and inherent in the "going concern" at the date of acquisition. The accountant realizes that, in a capitalistic economy, value is a property or property right, and that all expenditures, ideas, actions, or circumstances, which enable a more efficient use of property, create, thereby, an additional property right of the pos-

sessor of that property which can be owned and transferred. He realizes that these intangible attributes ordinarily have a life coterminous with that of the earning entity, and, therefore, considers these remaining costs as representing costs which do not waste away or require replacement.

As the total cost to acquire represents the estimated "going value" of the entire entity, these remaining costs, usually called the "going value" of an earning entity, actually represent only that portion of the estimated present value of future earning power, or the total "going value," which is not assigned to the physical component. It does not represent the entire "going value"; neither does it represent a separate and distinct segment of earning power, or value, superimposed upon the physical values. While costs can be analyzed and assigned through estimates to the component parts of an earning entity, these parts can have a value only as a part of the whole; therefore, the accountant would never consider an analysis of costs as an assignment of value.

It is submitted, therefore, that a regulatory policy which treats cost as a property or property right that can be owned and transferred; that considers cost and value as synonyms; that measures cost, not by the sacrifice to acquire, but by some predecessor's cost to install; that assigns values arising from intangible attributes to society, leaving only the cost of physical property as a property right of the individual, and requires that actual cost of intangible attributes be amortized against the ownership equities—such a policy cannot be reconciled with the fundamental rules and principles of accounting.

The economist's viewpoint of property, or property rights, lies, not in its cost, or the sacrifice made to obtain possession, but, instead, in the power of the possession to confer benefits on its possessor. The economist, therefore, sees the entire property right of a "going concern," represented by the fixed capital, as the mere right to future benefits to be realized through its use. He knows that the entire fixed capital, both tangible and intangible, has only an over-all intangible value, arising from and consisting of its total earning power. The economist knows that this intangible value cannot be distributed or assigned to the component parts of an earning entity, for the value of each part is dependent upon the use of the other and is inextricably bound up in the total value of earning power.

Further, the economist recognizes use, or utility, as an economic factor and, therefore, he would recognize any

¶ "ACCOUNTING *rules and principles were developed in full recognition of the fact that, under a capitalistic form of economy, cost and value are two separate and distinct factors. The accountant realizes that you incur* COST *to acquire* VALUE; *that you make sacrifices in order to obtain benefits; that all sacrifices do not result in compensatory benefits; and that all benefits do not require comparable sacrifices.*"

expenditure which enabled a more efficient or productive use of physical property as the purchase price, or cost, of an additional property right.

That is conventional economic theory, of course. A communistic or socialistic economy, on the other hand, would limit the benefits of possession to the sacrifice ("toil or effort" to use the Marx phraseology) made to obtain possession. The distinguishing feature of a capitalistic economy is this recognition of values, arising from intangible attributes, as a property right of the individual. Thus, the basic principle of our American system of "free enterprise" is the opportunity offered to the entrepreneur to create *additional* values; the opportunity to benefit through the exercise of *individual* initiative, ingenuity, and enterprise. Such a system recognizes these additional values as a property, or property right, of the individual who creates or acquires them.

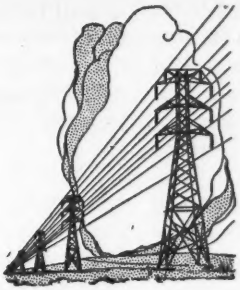
IF, as suggested in the FPC "original cost" program, there is no property except physical property, and the value of physical property is its "original cost," the whole science of property economics; under our capitalistic system of private free enterprise, simply collapses. The capitalistic economist cannot, logically, agree that the property right of the private owners of a utility property should be limited to the "original cost" of the physical component of such property and that all values, or benefits, arising from intangible attributes inherent in such property, should be assigned to society as social values. Such a view must, therefore, be based on Marxist economics.

Our law has always recognized intangible attributes, or values arising therefrom, as a valid property right. We find it in our real property law, our personal property law, our tax law, our contract law, even in our law of torts. Only in the field of regulatory law has this basic concept of property right ever been questioned and that but recently.

The many judicial determinations of value which reflect and represent the legal concept all recognize the fact that value represents the power to confer benefits through possession, and that such power, which is a property right, cannot be measured by the mere sacrifice made to obtain possession. Every judicial determination of value that now represents the laws of property and property rights, without exception, recognizes the *possibility* of intangible attributes as property rights and as legal assets. The very fact that a judicial determination of value is required is conclusive proof that cost, or the mere sacrifice made to obtain property, is not the legal limit to a property right.

THIS writer is not unaware that, under the "no formula" trend of rate decisions by the U. S. Supreme Court, which began in 1933 with the Los Angeles Case[3] and culminated early this year in the Hope Natural Gas Case,[4] the Federal judiciary has ceased to undertake the specific revision of commission findings. The highest court did not, however, revoke earlier decisions to the effect that—for rate regulatory purposes—value, as well as cost, should be given consideration. The court's present attitude is simply

[3] 289 US 287, PUR 1933C 229.
[4] 320 US 591, 51 PUR(NS) 193.



Value As a Property or Property Right

"THE accountant realizes that, in a capitalistic economy, value is a property or property right, and that all expenditures, ideas, actions or circumstances, which enable a more efficient use of property, create, thereby, an additional property right of the possessor of that property which can be owned and transferred."

a negative position which refuses to endorse any specific formula. And this, in turn, places all the more responsibility upon regulatory commissions to render to accounting the true functions of accounting, and to render to rate regulation the responsibilities which should go with rate regulation.

Every utility valuation case decided on the merits of the question by courts or regulatory authorities, past or current, at least recognizes that values in excess of the bare "original cost" *can,* and in most cases, do exist as a property right. Professor Henry E. Riggs found approximately two hundred decisions of courts and commissions making allowances for "going values," these allowances totaling approximately $142,000,000 as compared to "physical values" of $1,500,000,000.[5] Professor James C. Hemstead, of Iowa State College, made a study of forty-five utility valuation cases decided by the U.S. Supreme Court, and U.S. District courts during a period from 1901 to 1933. In all except one of these cases the courts found that "going value" in excess of the cost of the physical property *did* exist. This excess ranged all the way from 3.52 per cent to 15.54 per cent of the cost of the physical property.[6]

ONLY a few weeks ago a Federal 3-judge court set aside an original cost accounting order of the Federal Communications Commission which attempted retroactively to apply FCC original accounting theories (very similar to FPC accounting theories) to plant accounts of the New York Telephone Company which had validly been

[5] "Going Concern Values Running into Millions," by Henry E. Riggs, PUBLIC UTILITIES FORTNIGHTLY, Vol. XII, No. 13, p. 763, Dec. 21, 1933.

[6] "Engineering Valuation," Marston and Agg —1936 Edition, pages 354, 355.

made on a basis which included consideration of value back in the 1920's.

In dealing with property values, generally, our courts have established these values, not as *social values,* but, instead, as the property, or property rights of the private owners of these properties. As property rights, these legal values, or this legally established earning power, could be transferred for consideration just as any other property or property right, with the transferes being entitled to the same legal protection as the transferor.

How, then, can this excess of the value of future earning power, over the "original cost" of the physical component of the earning entity, established by these authorities as a property right of the tranferor, become, in the hands of the transferee, or the present owner of the physical property, social values, or such values as can accrue only to the public? How, then, can that portion of the purchase price of the transferee, which recognized this legally established property right, now be indicted as such an imprudent or improper expenditure as would represent an outright loss of the present owner which should be written off against his equity?

REMEMBER—the "original cost" program, now being pursued by the Federal Power Commission, limits the future earning power of a utility earning entity to a "fair return" on the "original cost" of the physical property, and requires that acquisition costs in excess of this "original cost," segregated in Account 100.5, be amortized, not against operations, but out of the ownership equity in these *reduced* earnings. This program, in effect, would limit the benefits of ownership of public utilities to a mere creditor's return on the contribution of some *prior* owner to the "original cost" of construction of the physical property. This, minus "depreciation."

THUS it could appear that the economic philosophy, which underlies the regulatory policy of the Federal Power Commission, as revealed in its "original cost" program, is foreign to the established views of accounting, economics, and law. Rights which distinguish an owner of property from a mere creditor—that is, the right to values created by the intangible attributes inherent in such property or its owner—would be completely erased by the FPC. The property owner becomes, in effect, a creditor of a *publicly owned property.* To put it another way, under this theory all benefits arising from the ownership and operation of a utility enterprise are, in effect, assigned to the public, or society, and, out of these benefits, the government on behalf of the public, or society, allows to this "synthetic" owner a fair return on an amount measured by the depreciated cost, to some predecessor, to install the physical units of property. Under this theory the owners occupy the same identical position as that of a creditor under our private enterprise system, except that under the private enterprise system even a creditor's return is limited by *his* sacrifice. This FPC theory ignores the sacrifice of the present owner and adopts, as the measure, the ancient sacrifice of some predecessor owner. Under this line of reasoning, if the territory of Alaska were considered a utility property, it would today be allowed to earn a return on

the mere seven million dollars "original cost" paid to Russia in 1863 plus bare cost of physical additions and improvements.

FURTHER, under this theory, the public utility industry has, in effect, been "owned" by the public, or society, from its experimental beginning to its successful maturity, and, therefore, periodic changes in nominal ownership have been nothing more, nor less, than changes in managers who were, at the same time, creditors of this "publicly owned" industry. Under no other concept could actual arm's-length acquisition costs arising through these changes in ownership, which exceed "original" installation cost, be indicted as imprudent or improper costs. Under no other concept could "original cost" become *true* cost.

Will such a regulatory program, with its underlying concept of value and of property rights, result in the socialization of the electric industry? A classic definition of socialism, by G. D. Howard Cole, M. A., is found in the *Encyclopedia Britannica,* and reads as follows:

> Socialism is essentially a doctrine and a movement aiming at the collective organization of the community in the interest of the mass of the people by *means* of the *common ownership and collective control of the means of production and exchange.* (Italics supplied.)

If the "original cost" program, now being pursued by the Federal Power Commission, is successful, the public, or society, will secure all the benefits of ownership of this segment of American industry, leaving such detriments as may have accrued to ownership, during the period of development, as the burden of the private owners. Could this be a part of a plan to socialize our whole American economic system?

The platform adopted by the national convention of the Socialist party in 1928 contained the following statement:

> 1—All business vitally essential for the existence and welfare of the people, such as *railroads, express service, steamship lines, telegraphs, mines, oil wells, power plants,* elevators, packing houses, cold storage plants, and all industries *operating on a national scale, should be taken over by the people.* (Italics supplied.)

MANY of the industries specified in the above excerpt are now regulated, with the agitation increasing, day by day, for such regulatory powers to be extended to cover still other industries.

The "original cost" program of the Federal Power Commission, which indicates that this authority considers regulatory powers an opportunity to socialize, and would so use them, should cause the American businessman much concern.

The motivating factor to the development and growth of our American system of "private enterprise" has been the opportunity, offered to the individual, to profit by the wise and efficient use of private possessions. Should the time ever come when the legality of these profits and the validity of these property rights can be determined solely by an arbitrary social view of such Federal regulatory authority as chanced to be currently in power, then, at that time, our American system of "private enterprise" will cease to exist.

Good Will through the Utility Window Display

The cumulative effect, says the author, of devoting valuable display service, week after week, and month after month, to various patriotic and civic causes, is bound to awaken a feeling of response—gratitude, respect, admiration, or at least a friendliness—in the mind of every thoughtful citizen.

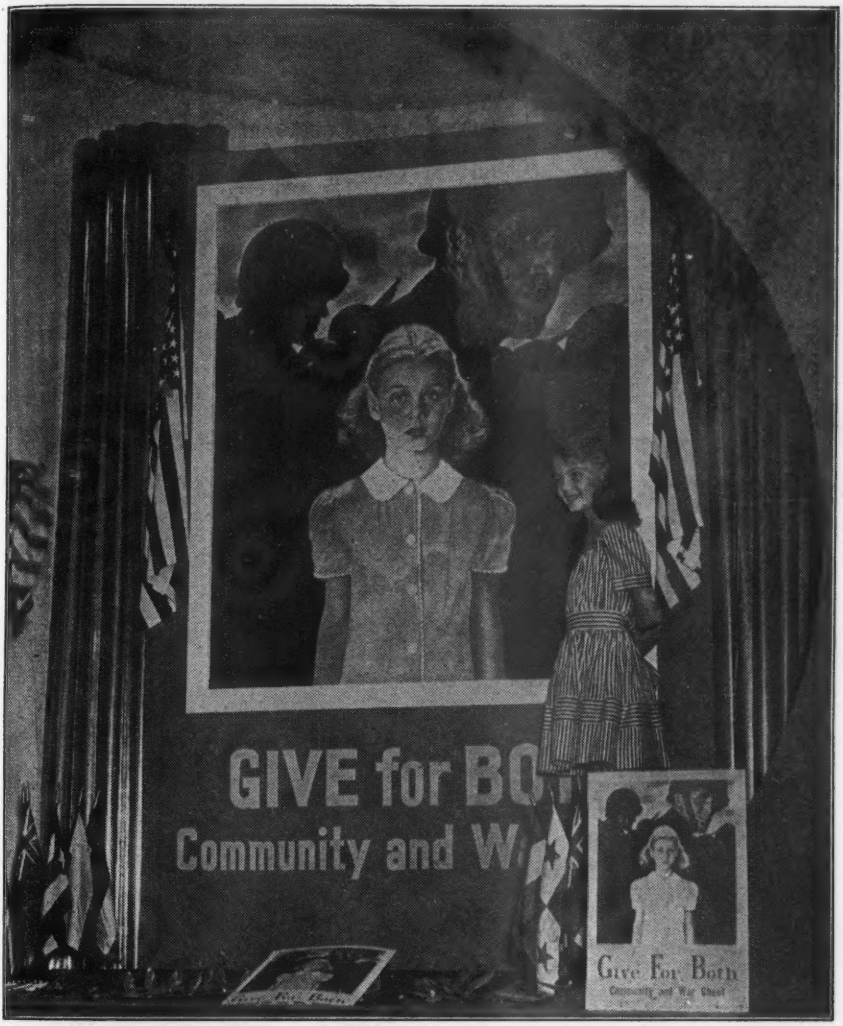
By ARNOLD HAINES

PUBLIC utilities have never exactly hidden their light under a bushel. But there are a number of public utility companies which may, perhaps, be overlooking a valuable public relations contact which is theirs, almost for nothing, right in their own back yard, so to speak. That is the display window, or places where the display windows ought to be, in their own office buildings.

Utilizing window display for straight commercial promotion is, of course, far from new in the utility business. But the war years have brought home a lesson which may be new to some. That lesson is that the utility window display can go a long way towards establishing and maintaining better public relations for the utility, by the simple yet somewhat subtle approach of a *community display.*

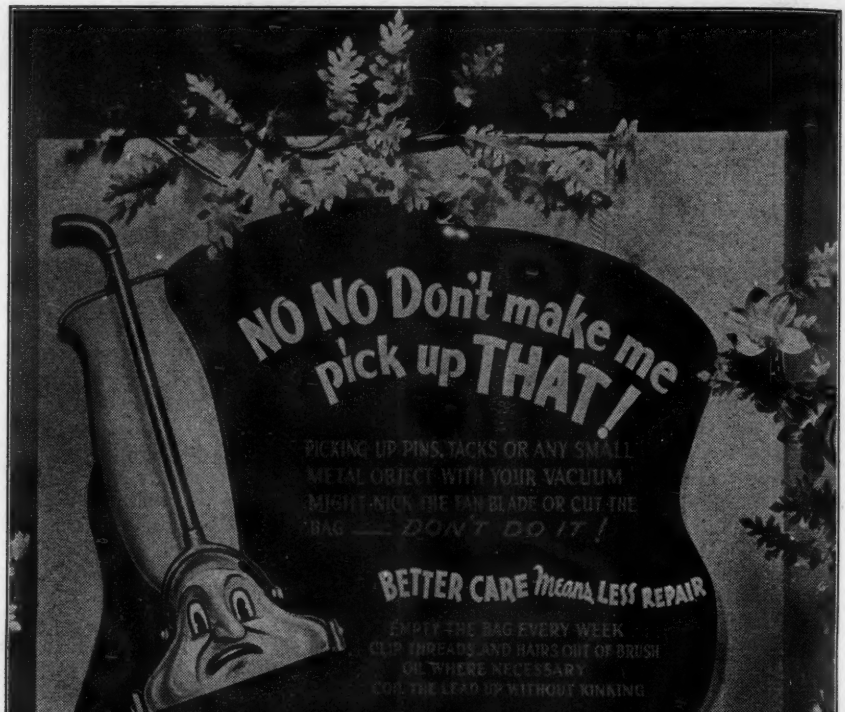
Utilities, generally speaking, have always recognized the value of taking the leadership in patriotic and charitable, civic enterprises. There has perhaps never been a Community Chest, or Red Cross drive, of any size at all which did not have gas, electric, telephone, or transit company officials taking leading parts—very often assuming the chairmanship and the major personal responsibility for organizing teams, rallies, and so forth. The war period, with its war loans, Army forces recruiting, civilian defense, blood donor, and other drives, has tremendously increased these opportunities for public utility companies to help the community to do its share, and be proud of itself for doing so.

This is all good citizenship, as well as good sense. So is the happy idea of paid radio and newspaper advertisements which utilities place at the service of these worthy causes. Nothing said herein is intended to subtract one iota from these various and commendable



The little girl in the window is the model who posed for the poster by Artist Douglas Crockwell. She is Noel Ruth Alverson, of Glens Falls, New York. In conjunction with her visit to Albany, sponsored by the utilities company, the local newspaper awarded a war bond to the person first identifying the youngster as she went shopping with her mother. The poster was awarded the Kerwin H. Fulton award for the advancement of art in outdoor advertising. Albany's Community Chest raised $60,000 more than previous years in this drive.

utility practices. But are they doing all that is necessary to get the optimum of public relations advantage out of these efforts? A partial answer might be as follows: If any utility company, carrying on such activity, is, at the same



Coöperating with local repairmen and distributors of electrical appliances, the New York Power & Light Company of Albany, New York, launches periodical campaigns for the conservation of appliances through window displays such as the above. Created in the busy workshop of Robert M. Angell, display supervisor, after their premiére in Albany, these displays tour the company offices in 34 cities and towns in New York state. Dealers and users of gas and electric appliances have responded with gratifying results!

time, overlooking the public contact opportunity presented in its own window display, it is doing itself an injustice. Like a splendid motor sputtering because of dirty spark plugs, it would seem a pity that perfect technical perfection is not obtained for so little additional cost and effort.

GOOD WILL THROUGH THE UTILITY WINDOW DISPLAY

THIS article is not written by one who has the slightest commercial interest in, or connection with, any window display organization. The approach is entirely objective. Whether a utility decides to hire the services of a professional decorator or prefers to develop experts from the ranks of its own personnel is not decisively important. The important thing is whether your company's display window is doing what it could do to develop good will for your organization day in and night out—or whether it is merely marking time, if not plain loafing.

If a survey of "loafing windows" in utility main and branch office buildings —suitable for display purposes—were made throughout the United States, the result would be surprising. A recent trip through more than a dozen very large, medium, and small-size cities—a simple stretch of U. S. Highway No. 1 between Philadelphia and Washington, a distance of less than 150 miles—revealed that *only about 50 per cent of the utility building window space is "working" at all.*

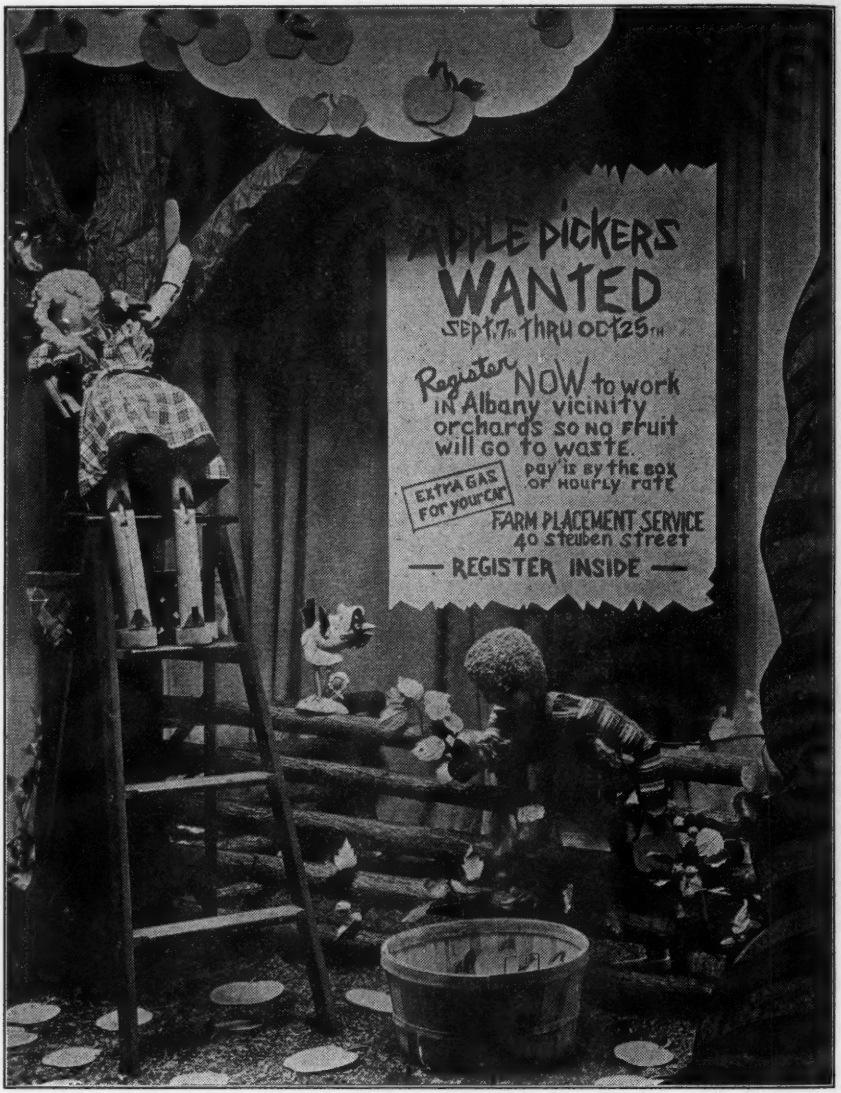
A few utility office buildings have been constructed without any suitable provision whatever for display. Presumably little can be done in this temporary period of construction curbs to correct such a situation by wholesale overhauling of building façades. It might well be a worth-while postwar project, however. This is usually the result of utilities taking space in a conventional office building designed for general occupancy.

A NUMBER of utility companies have good display window space which they are not using at all. One company, for example, has blacked out, with black drapes, about half the space of its ground floor windows to shoulder height. This emphasizes the gold lettering which identifies the utility company. It was doubtless intended to be dignified and to shield inside office workers from unnecessary scrutiny of sidewalk traffic. But with the passing years and inattention to details, this setup gave this observer the impression of being a pretty fair imitation of a conservative saloon in those states where the law requires that curtains be drawn to shield the bar and its customers from the innocent attention of the passing public.

Several other utility companies have window displays which are junky, confused, and quite unattractive. The display bays are littered with placards, some patriotic, some commercial, and some calling attention to coming social events, including a prize fight—for a worthy charity, no doubt.

Two utility company window displays, reviewed in this little "horseback survey," were beautiful, dignified, artistic—but otherwise entirely meaningless. A baby spotlight focused on a solitary vase of golden foliage against a back drop of dark velvet drapes caught in a valance with sturdy, jeweled tie-backs. This is certainly a pleasant sight. But it reminded this writer of the remark of the French tourist when he gazed at the Grand Canyon: *"C'est magnifique; mais impracticable!"*

SEVERAL utility companies have outright commercial displays of apparently professional design and supervision. This, of course, reflects a decision of managerial policy, which is beyond the scope of this discussion. If



This display came from an urgent appeal to the city to produce needed man power to harvest the district apple crop. P. S. The crop was picked!

it is a company's policy to engage in merchandising appliances, the display window, obviously, is the logical and proper place for sales promotion. It is a fair question, however, whether, in these days when there are so few,

Here's an example of working along with the local theater to promote recruiting of Red Cross nurses. The windows of the utility are made available for promotion of all organizations, national and civic in scope, which help link the war front and the home front.

if any, appliances to sell, such window display space might be given over to straight good-will production from the community service viewpoint.

This brings us to the main proposition of this little discussion; namely, that a utility company which makes intelligent and artistic use of its window display space for community service will reap more dividends in public relations than (a) no use at all of its display space, (b) a confused, unsupervised, or poorly managed display for any purpose whatsoever, or a multiplicity of purposes, or (c) an out-and-out promotional use obviously designed to serve the commercial interests of the utility corporation.

What is a "community service" under such circumstances? Broadly speaking, it could mean coöperating with or promoting any drive, rally, program, etc., which all or most of the community population would agree should be helped in every way possible. It would include, therefore, not only local or strictly civic enterprises but also national or regional projects. By the same token, it would exclude causes, however worthy in themselves, which have only the support of some group or faction, such as the program of some particular lodge, political or religious organization, reform movement, etc.

EVERY utility company is quite likely to shy away instinctively from the latter mistake. But there may be a question in some instances as to just what specific causes do appeal to the community as a whole. The war has brought forth a host of opportunities along this line. Below is a list of items which utility companies now using this window display program to help community projects have actually worked on.

The accompanying photographs, taken principally from the splendid series of the Albany, New York, displays of the New York Power & Light Company, show graphically just how the subjects are handled. Note how the utility company steers away from any appearance of self-interest or straight commercial promotion in these selected compositions. Even the displays which have to do with saving wear and tear on appliances stress the conservation angle from the consumer's own viewpoint—never from the company point of view.

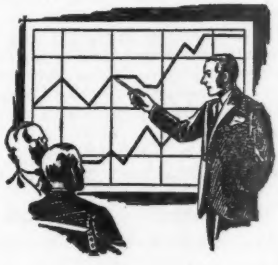
THAT is, perhaps, the keynote of the appeal. There is something so sporting, something so square and fair about a window display and other advertisements of the Bell Telephone system, for example, which urge people to refrain from using the long-distance circuits, which is bound to appeal to the most sportsmanlike population in the world—the American public. The Bell system has, perhaps, spent more money during the past two war years trying to get people to *refrain* from using telephone service, than it did in the preceding decade trying to get people to *use more* telephone service.

Finally, the average utility office building is generally right downtown in a location where the best part of the

Recruiting Windows	*Drives*	*Home Front*
Marines	Scrap	Loose Talk
SPARS	War Bonds and Stamps	Girl Scouts
WACS	Community and War Chest	Boy Scouts
WAVES	Red Cross (funds and blood bank)	War on Waste
Army	Tuberculosis Seals	Victory Gardens
Navy	March of Dimes	Home Safety
Interceptor Command	Clothes for Devastated Areas	Defense Work
Nurses	Apple Pickers	Thrift (SAVE AND CONSERVE) (CARE AND REPAIR)
State Guard		Rationing
		Victory Kitchen
		Food Information
		Canning, etc.

town's population passes every day or so and, in many cases, several times a day. The cumulative impression of a utility company devoting this valuable display space, week after week and month after month, to these various patriotic and civic causes is bound to awaken a feeling of response—gratitude, respect, admiration, or at least a friendliness—in the mind of every thoughtful citizen. The very sight of the gas, electric, telephone, or transit company windows tends to become associated in the mind of the average man on the street, with the highest type of civic leadership and responsibility.

After all, the smart public relations approach is to appeal to the self-interest of the man whose favor you want—never to appeal on the obviously selfish basis of something *you* want. And when the appeal is pitched on a high plane of something we all ought to want, it can hardly fail to ring the bell.

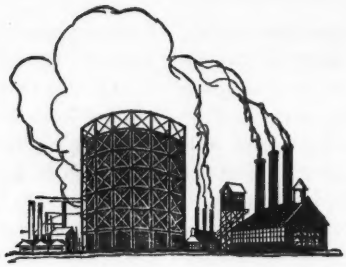


Corporate Tax Key to Postwar Gains

"THE conclusion of the CED [Committee for Economic Development] are based primarily upon the conviction that the taxes which do the most harm to production and employment are those which interfere most directly with the business process. At the forefront of these stand the taxes on corporate earnings. When one realizes that well over 50 per cent of all invested capital in this country has come from the ploughing back of corporate earnings, some measure of the stifling effect of heavy corporate taxation becomes apparent.

"By the unthinking, this corporate tax proposal will be opposed as a device to help big business. Actually just the reverse will be true. Large corporations can almost always obtain the funds needed for expansion by the public sale of their securities. Most small businesses, however, have no access to the public capital market and must rely almost wholly upon ploughed-back earnings as the source of funds for expansion. I am prepared to state categorically that heavy corporate taxation provides one of the most important stimuli for the growth of monopoly power ever devised by man."

—JOHN F. FENNELLY,
Executive director,
Committee for Economic Development.



London's Gas Supply in Wartime

The following article was contained in a communication from Mr. Everard to Davis M. DeBard, until recently head of the conservation division of the War Production Board. It is regarded by the editors of this magazine as of sufficient interest and importance to warrant wider publication—so that those interested in the wartime operations of public utilities in the United States can judge some of the hardships experienced by gas companies under actual fire. The recent buzz bomb blitz opened up anew the heart-breaking problem of keeping London's civilian economy in operation under tragically adverse circumstances.

By S. EVERARD
MANAGER, LONDON REGIONAL GAS CENTRE

It was about the time of the ill-fated Munich conference that London gas companies — or "undertakings," as they say in England—began to consider what would be the effect on the gas supply should London ever be faced with heavy bombing attacks in time of war. At first the question seemed academic, but soon it was clear that certain problems arose which must be provided for in detail if provision was to be made at all.

First of all, production of gas must continue, and it was essential to see that the gas works were as little vulnerable as possible. Provision must be made against blast damage to essential plant; certain equipment must be duplicated so that one bomb could not succeed in knocking out the whole of a works. Detailed proposals were made by each company, and were carried into effect in due course.

Gas works, of course, are normally at work round the clock. In wartime the labor problem would differ little from that in peace, except that working conditions would be less pleasant under a black-out. Mains repairs, on the other hand, are ordinarily effected in daylight, and when the day's work is done the members of the distribution gangs go off duty. Raiding would require distribution gangs on duty at all hours of the day and night, seven days a week. Moreover, the number of broken mains might well be very considerable. This raised the problem both of man power and equipment. The companies called for volunteers from among the fitting staff and others and began to train them as distribution men to take their place in the mains repair parties should need arise. More equipment, particularly compressors and road-breaking plant, was bought.

Technical officers, whose normal duties were nothing to do with mains, were given instruction on the distribution system.

Next, there was the question of communications. Almost every bomb that fell would mean a telephone message to the gas company, for even if no main was broken, house property might be damaged, requiring the disconnection of the supply. The normal gas company depots did not need many telephones for peacetime work. In war they would require not only telephones but technical men to take the messages.

CASTING around for suitable personnel to man the telephones, the companies realized that in their outdoor representatives and district office staffs they had the ideal. These men, by the nature of their work, knew their own districts like the backs of their hands; but, once war was declared, they would have little work to do, for the sale and exchange of apparatus would be sternly discouraged. From their numbers volunteers were called for to be trained as "report officers," to receive bomb damage reports and assess them in importance according to the nature of the report and the size of the mains in the street.

"Report centers" and protected refuges for the repair parties were built in the repair depot yards, most of these taking the form of concrete trenches under the yard roadway. Each report center had, wherever it was possible to obtain the facility, telephones from two different exchanges with the leads coming in in different directions. This was an insurance against broken communications. The report center equipment included detailed mains maps.

By the outbreak of war, preparations were complete. Business procedure was harnessed to war needs in many directions. For example, a multipart "bomb report form" was introduced in many districts which was prepared with four portions, each of a different color, with interleaved carbons, and which was the counterpart of a peacetime apparatus order. One part became the "job ticket" for the mains repair gang, one was taken by the fitters attending house property to cut off service pipes, one went to headquarters as the job history, and the fourth was retained as the local record of the incident.

All the arrangements were the responsibility of the individual companies; but in May, 1939, fifteen companies serving the London area decided to set up a central committee on civil defense, and this committee developed into the London Regional Gas Centre.

THE Centre is unique in that it is the only organization of its kind to be voluntarily formed, without official prompting, and, although now officially recognized, it still retains its original constitution after nearly five years of war. It is maintained by its constituent companies, each of which contributes to the expenses in proportion to the quantity of gas sold by the company in the previous year. The number of constituent companies has now been increased to twenty, serving a population of over nine million in peacetime in an area of some thousand square miles.

The first job undertaken by the Centre was the recording of the preparations already made by each company, and the pooling of ideas. Then, when

war was declared, the Centre opened a control room to which any company which was hard pressed could appeal for help. This would be provided by the companies unaffected by the bombing, the Centre making the necessary arrangements. The Centre, consequently, had to keep in touch with all its member companies in order not to waste time and effort on fruitless calls in a time of emergency. Later the Centre became the official contact between the gas companies and the other utilities and the government departments.

The manager of the Centre and its staff are in normal times gas company officers, and, when there is no bombing, the whole conduct of the organization is carried on as a voluntary duty on top of the ordinary day's work.

WHEN a bomb falls notification is sent to the local gas company report centre by the local authority control room, which has received particulars from the air-raid warden on the spot. The gas company has to take action, but, in order not to dissipate its strength in mains repair parties, it will in many cases send a light party to investigate (unless, of course, serious damage is known to have occurred).

The light repair party sets off at once, and can deal with the majority of incidents without help. If the gas damage is serious, however, the leader of the party telephones back a detailed "diagnosis" to his report officer, and instructs the other services on the spot as to whether they should take special precautions, meanwhile awaiting the arrival of the heavy mains repair party with a mobile workshop. The mains repair party gets to work and secures the mains, temporarily cutting off the flow and leaving the incident for permanent repair by a daytime repair gang.

If the amount of damage suffered in one raid in any area is beyond the capacity of the company serving that area to handle, the company can appeal to the Centre control room for help.

The Centre control room is manned at all times, and ordinarily there are on duty a duty officer in charge, a report officer, and two telephonists, though the staff may be larger if circumstances warrant.

The duty officer must know the position in the areas of all his undertakings at any time during a raid, and the report officer keeps him informed, using the telephone as a "dipstick." But there is one golden rule, and that is that the man on the district has got to take action; he must not be bothered with unnecessary telephone calls, particularly when something serious has happened in his area. Deeds first, words later.

❦

¶ "GAS *works . . . are normally at work round the clock. In wartime the labor problem would differ little from that in peace, except that working conditions would be less pleasant under a black-out. Mains repairs, on the other hand, are ordinarily effected in daylight, and when the day's work is done the members of the distribution gangs go off duty. Raiding would require distribution gangs on duty at all hours of the day and night, seven days a week.*"

Consequently calls are only made by the Centre for routine information at prearranged times, or when there is an urgent need for information, and all calls are kept short. On the other hand, the companies notify the Centre of serious incidents as soon as possible, and keep it informed of the general situation of the district.

THE Centre control room telephone rings, and is answered by the report officer. He turns to the duty officer:

"More reports from the East End. The 24 inches east to west low-pressure main has gone at So and So street. Ten smaller incidents."

"Is supply affected?"

"No. The alternative routes are still open."

"Do they want help?"

"Not yet, but if it doesn't ease up soon they could do with some mains repair gangs. I told them we'd ring later."

"Good. Well, there's no damage in the west so far. Ask the western companies if they can each spare a gang if need be, and see who can send a compressor with their party. They're not to send until we tell them."

The report officer makes the necessary contacts, and reports:

"Four parties available at once in the west. One has a trailer compressor for two breakers, or three intermittently."

The duty officer discusses the position with the affected company and decides to send two parties including the one with the compressor. He uses his knowledge of the extent of damage throughout the region as a guide. Others may be wanting help later, or the raid may veer round towards some of the companies offering help. The instructions are given:

"Ask your ganger to report to the depot at the company's works. You know the best route? . . . Well, they'll have to make a detour to avoid the road block at X. Otherwise OK. Don't forget the rations and identity cards. Your chaps will find plenty to keep them busy when they get there. Thanks very much for your help."

THAT is one gang on the way, prepared against all contingencies such as the breakdown of local feeding arrangements or a challenge by the authorities as to their bona fides. The second is similarly notified and sets off. The borrowing company is told that they are coming, and is asked to tell the Centre when they arrive. The movement is recorded in the Centre log, and that job is done, so far as the control room is concerned. In due course a charge will be made by the lending company to the borrowing for services rendered.

Gas repair work is less spectacular than that of the fire brigade, and a little more time is available for the transfer of resources. Sometimes, however, the need is very urgent, in which case the nearest depot in the affected area will be asked to help during the time taken for assistance to arrive from the unaffected areas. In one heavy raid seventeen mains repair parties were brought in from outlying companies as well as many moved around within London itself, and as a result of this the situation never got out of hand.

In some high-risk districts, control valves have been installed at all important intersections (they are not normal

Repairing Damaged Service Connections

"BRITISH utilities in London face the problem of repairing service connections and other facilities damaged by the robomb blitz. But the robombs caused chiefly surface damage, as distinguished from the huge craters which the Luftwaffe made in the 1940 blitz, tearing up London's streets and shattering mains and cables in ghastly fashion. On the threshold of winter, today, Britain is confronted with the task of rebuilding or repairing NEARLY ONE MILLION HOMES *damaged by the robombs—nine out of ten in the London area."*

peacetime practice in London), and to meet serious damage an area perhaps of two or three streets, perhaps of many, is isolated, and the gas supply entirely cut off. The men employed on this work are known as valve locators, and they operate in pairs with a car carrying their tools. The order in which the valves are shut off has been worked out for every group of streets, so that all that is necessary is that the valve locators be given a "scheme number." If it is "scheme ten" they go straight to the first valve listed in scheme ten in the valve book, then to the second and so on until isolation is complete. The classic case of valve operation is the City Fire Blitz of December, 1940, when the whole of the city of London appeared to be burning, and when the gas supply was cut off by valving at the start of the raid.

AFTER a heavy raid the Centre notifies all the appropriate regional authorities of the gas position—areas without gas, works damage, serious mains damage—and arranges, if need be, for daytime gangs to be lent to affected companies for permanent repair work.

For civil defense purposes gas works are self-supporting, and many very brave deeds have been performed by works personnel in claying of damaged holders and dealing with shattered plant.

Every company has the right of appeal to the Centre for help of any kind for civil defense at any time of day or night. Corrugated iron is wanted here, emergency labor there, a 24-inch collar for an urgent mains repair somewhere else. The Centre finds what is needed, going to the regional authori-

ties if necessary for help. Nothing comes amiss to the Control Room staff. When eighty-five U.S. Army lorries missed their route coming into London to pick up 450 tons of coke, the leading driver did what visitors to London often do—he asked a policeman. The policeman rang up the Centre, and in two minutes the convoy was on its way to the gas-works where the coke was ready for loading.

Epilogue

LIEUTENANT Colonel Duncan Sandys —M. P., son-in-law of Prime Minister Churchill, and, more important to the people of England, in charge of Britain's defense against the buzz bombs—recently released the truth about the devilish results brought by this Nazi terror. He reveals also that the city of London and the surrounding area face the heart-breaking task of rebuilding a substantial portion of the homes and other property damaged and destroyed by the robot blitz. It follows, of course, that public utilities of the London area have had to cope again with a corresponding problem of keeping public service going, although in that respect the robot terror did not pose quite the serious problem to the operating utilities as the original Luftwaffe blitz attack in 1940.

Salient facts in Lieutenant Colonel Sandys' report were as follows:

(1) In eighty days, the robombs had damaged 870,000 houses, killed 5,817 people, seriously wounded 17,036 others.

(2) A total of 8,000 1-ton robombs, averaging 100 a day, were launched by the Germans (beginning June 16th), of which only 2,300 reached British targets.

(3) Defense technique improved rapidly from the first week of the robombs, when one-third got through to England, until the final week prior to the lull resulting from conquest of the Calais coast, when only 9 per cent got through.

(4) Honors were almost even on defensive action between the air force, which shot down 1,900 robombs, and the ground crews, which shot down 1,500—using 2,800 ack-ack guns, of which one-eighth were U.S. batteries.

(5) Ninety per cent of all casualties occurred in London, the residential areas taking heavy blows. Silver lining: Speed of the robombs (350-400 miles per hour) sharpened Allied marksmanship tremendously—of both air force and ground crews.

THE joy felt in mid-September over the slackening of the robomb blitz was overcast, to some extent, by the succession of stragglers which continued to come over thereafter, bringing death and destruction in smaller doses. There was also the fear that another boasted German secret weapon, V-2, might make its appearance.

British utilities in London face the problem of repairing service connections and other facilities damaged by the robomb blitz. But the robombs caused chiefly surface damage, as distinguished from the huge craters which the Luftwaffe made in the 1940 blitz, tearing up London's streets and shattering mains and cables in ghastly fashion. On the threshold of winter, today, Britain is confronted with the task of rebuilding or repairing *nearly one million homes* damaged by the robombs—nine out of ten in the London area.

But twice-tried London during this war has already proved that her valiant citizens will be ready when the lights go on again. Certainly her gas undertakings have not faltered.

Wire and Wireless Communication

AFTER formally closing hearings on spectrum allocations of radio frequencies on November 2nd, the FCC began its deliberation on resolving the various conflicting applications for radio space. On the last day of the hearings the Radio Technical Planning Board, through its Panel No. 2 on frequency allocation, recommended spectrum allocations above 23.5 megacycles through the ultra short-wave frequency span of 30,000 megacycles or more.

The panel recommendation did not resolve the differences between those promoters of television who want to move "upstairs" on the spectrum and those who want the new television art to remain, temporarily at least, "downstairs." Summing up the gist of the RTPB Panel No. 2, the following allocations for various purposes would be made:

Television, 7 channels each 6 megacycles wide, ranging from 60 to 102 megacycles. These channels would be shared with nongovernmental emergency service, which includes fire, police, forestry, conservation, and public utility emergency service. An additional 11 channels, also 6 megacycles wide, would be provided in the 152- to 280-megacycle range. Ten of these would be shared with government and nongovernmental services, broken into various geographical areas known as A, B, C, and D.

Experimental television. This would also include the relay of television chain programs and eventual "upstairs" possibilities for more refined improvements in television operations in the future. The panel recommendation would be from 460 to 956 megacycles.

Frequency modulation. This improved system of radio broadcasting would have 75 channels each 200 megacycles wide, ranging from 43 to 58 megacycles.

FACSIMILE. This proposed service for transmitting pictures, printed matter, and other visual copy by radio would be assigned the ranges between 450 and 460 megacycles when channels presently used for air navigation aids (radar) are discontinued after the war.

Amateur. The so-called "hams" would receive the following scattered assignments: 27 to 29 megacycles; 58 to 60 megacycles; 144 to 148 megacycles; 218 to 225 megacycles; 420 to 450 megacycles (when air navigation aids are discontinued after the war); 725 to 1,225 megacycles; 2,500 to 2,700 megacycles; 5,200 to 5,950 megacycles; 10,000 to 10,500 megacycles; 21,000 to 22,000 megacycles.

Radiotelephony and other miscellaneous services. The request made on behalf of the telephone industry for exclusive frequencies to conduct various radiotelephone operations, including short- and long-haul toll automobile telephones (urban and highway), isolated and rural telephones, etc., would be denied. But provision would be made for shared frequencies for this purpose, included with various other requests for similar usage: railroads, coastal harbor,

taxicabs and busses, petroleum operations, special experimental low-power mobile and point-to-point service, electric power and other utility communications. These miscellaneous frequencies would be as follows: 3 shared channels from 29 to 42 megacycles; B areas from 152 to 158 megacycles, from 176 to 182 megacycles, from 188 to 194 megacycles, from 200 to 206 megacycles, and from 212 to 218 megacycles; in A areas 158 to 164 megacycles, from 182 to 188 megacycles, from 194 to 200, and from 206 to 212.

Relays. From 700 to 900 megacycles (shared with experimental television), 1,600 to 1,900 (shared with government), 1,900 to 2,300, 3,900 to 4,550, 5,750 to 6,800; 6,800 to 7,200, 10,500 to 13,000, 16,000 to 18,000, 26,000 to 30,000.

A NATION-WIDE radio relay network to handle all types of communication, including broadcast and television services, was proposed to the FCC by various witnesses during the final week of the allocation hearings. Of special interest was the program of the telephone industry, presented by Ralph Bown, director of television research of the Bell Laboratories, whose testimony was supplemented by Austin Bailey, radio engineer of the AT&T, and Francis M. Ryan, also a radio engineer of the AT&T organization.

On behalf of the United States Independent Telephone Association, B. C. Burden, consulting telephone engineer of Lincoln, Nebraska, outlined the plan of the independents which are working in conjunction with the Bell system to create a nation-wide radio relay wire system. Representing certain special independent operating companies controlled by the Gary system were V. E. Chaney of Fort Wayne, Colonel William R. Blair, USA (retired), and Rear Admiral Stanford C. Hooper, USN (retired), former chief of naval communications. Summing up for the independents, Mr. Burden told the commission:

> We are convinced that there is a genuine field of use for radio channels of the regional frequency type for common carrier telephone purposes. If we are not permitted to share in the new frequency assignments now being opened up in the region above 100 megacycles there will be a missing link in our communication system. . . . If complete and universal communication service is to be rendered, it will be imperative that a limited number of radio channels be made available to the telephone industry.

MR. BURDEN testified that following studies made by the Bell system, the independents and the RTPB, it was concluded that six primary applications of radio channels in the telephone field were recognized. These he enumerated as: common carrier emergency service, common carrier urban mobile service, common carrier highway mobile service, special situation short-haul toll trunks, special situation rural telephone service, long-haul toll trunks (involving intermediate repeater stations).

The proposed system would be used to serve isolated communities; furnish telephone service to farmers, ranchers, and others in remote regions; provide telephonic communication between individuals whether they be at home, in an automobile, in a boat, on a train, airplane, "or even on foot"; make available additional short-haul toll circuits; perform emergency services.

Colonel Blair asked for the following allocations: for emergency radio telephone and telegraph service, 2-8 kilocycles and 50-200 megacycles; for urban and highway mobile service, 50-200 megacycles; short-haul toll service (regular), 50-200 megacycles; long-haul toll channels, 300-15,000 megacycles; special rural channels (regular), 50-200 megacycles; remote control channels, 150-175 megacycles.

Admiral Hooper supported the request of the telephone companies for radiotelephone channels. He said:

> It seems our case is similar to several other services applying here and that the wise solution may be to allow such services what is possible up to 300 megacycles, and in addition to give them, provisionally, even a larger band than they need in the ultra high frequencies and above to provide for future expansion.
>
> Then, as it is proved that the services can

safely move to the higher bands, the licensees will come forward requesting that the provisional and experimental channels in these higher bands be made regular channels, and perhaps asking to vacate the lower ones.

Verne Chaney, who is in charge of the Gary system operating companies, had a statement put into the record which emphasized the importance of allocations by the FCC of adequate and appropriate frequencies for use in experimentation by telephone companies. Mr. Chaney said he expected to see expanding possibilities for public service in the field of radiotelephony, supplementing present telephone wire service. Mr. Chaney's statement referred to the fact that in the near future one of his affiliated companies expected to apply for radio frequencies for short-haul toll traffic.

THE Bell system proposes use of both broad-band cable and microwave radio relays to give the "most flexible and reliable network for serving the needs of the country," said Mr. Bown. Since a greater variety of electronic tools are available for the lower end of the 500-20,000-megacycle band, Mr. Bown suggested that developments should first take place in the lower portion of the ultra high-frequency spectrum and progress upwards as "knowledge of the art permits."

"If the hopes we entertain for the success of the experimental system between New York and Boston are realized, the radio relay type of transmission may well become an important feature of the communications system of the future," said Mr. Bown, who recommended that the following frequencies be allocated for the AT&T-Bell proposal:

Two blocks of 20 channels each, 20 megacycles wide, 1,900-2,300 and 4,000-4,400 megacycles; a space 1,000 megacycles wide between 11,500-12,500 megacycles; 10.15 per cent of the space above 13,000 megacycles reserved for experimentation and to meet future public telephone system requirements for this type of radio service.

Mr. Bown also suggested with no specific reservation, that frequencies in the region of 6,000-8,000 megacycles might be necessary, particularly if crowding by other services curtails use of the 2,000-megacycle band or if the bands above 12,000 megacycles prove unsuitable for relay purposes.

Elaborating on the plan proposed by Mr. Bown, Austin Bailey, radio engineer of the AT&T, and vice chairman of Committee 8, Panel 13, on November 1st gave details of a proposed new radiotelephone service which would make possible communication between any mobile unit suitably equipped and any telephone connected with the land telephone network.

He said the service would be available to anyone, but suggested the radiotelephone would be used more widely in doctors' cars, ambulances, trucks, busses, taxicabs, public service vehicles, barges, ferry boats, towboats, and possibly railroad trains and airplanes.

THIS proposed common carrier general mobile radiotelephone service would embrace two types of service, he explained, one primarily for urban areas and the other designed for outside or between those areas, to be known as highway service. He testified that to give highway service in the range between 50-200 megacycles, only 32 frequencies would be required for four simultaneous conversations with each specific station zone of about 315 square miles. For urban service in the greater New York area, about 100 circuits will be needed, requiring 200 channels between 50-200 megacycles on a 2-frequency basis. Those frequencies could be shared with certain other types of services.

The most ambitious of radio relay proposals from other communication interests—one which might be viewed in a sense as envisioning more competition for the telephone industry—was the proposal of Joseph Pierson, manager of Raytheon communication division and former president of Press Wireless. Mr. Pierson's company has been working on communication experiments in the super high frequencies not now in public

use. He said that "technical discoveries in this part of the spectrum, which we are obliged now to omit, permit a much greater range of service to the public than has been possible heretofore."

Pierson exhibited a large map of the United States which showed a proposed microwave communication relay system which would be operated across the entire country. There would be eastern terminals at Boston, New York, and Washington, with circuits following airline routes via Cleveland, Detroit, and Chicago to West coast terminals at Los Angeles, Seattle, and San Francisco. Across these routes would be automatic relay stations every 30 to 45 miles.

Commenting on the various communications services which the proposed relay system would permit, Pierson said that it should include better telephonic reproduction of the human voice than now exists and would provide telephone service to areas now without it. Raytheon requested three groups of frequencies at 1,900, 3,900, and 5,800 megacycles, included in that portion of the spectrum recommended by the RTPB for relay services.

* * * *

On October 30th Leighton Peebles, chairman of WPB Communications Division, announced modification of telephone orders U-2, U-3, and U-5. Mr. Peebles explained that these changes will give telephone companies more liberty of operation, especially with respect to small plant expansion and plant improvements.

Changes in U-2 and U-3 will permit small construction without the need of obtaining specific WPB approval. It was also indicated that U-5 may even be canceled in the near future following a WPB line for removing priority rating floors except for military schedules. This would, of course, entail eventual additional modification of U-2. Mr. Peebles' administrative letter to some 2,500 telephone companies, dated November 2nd, read in part as follows:

> The amendment of Order U-2 has eliminated controls on the installation of exchange central office equipment and on the replacement of central office equipment, station apparatus, and PBX systems, except the replacement of PBX systems with dial equipment. Schedule A has been amended to specifically include the Veterans Administration.
>
> The dollar ceilings of Order U-3 have been increased, both for obtaining new material with priority assistance and for the amount of nonpriority material which may be used without obtaining authority to begin construction. The amended order allows an operator to use the AA-3 rating and the allotment symbol U-9 to obtain materials and equipment for construction projects involving between $2,500 and $10,000 of material obtained under the order. . . .

* * * *

James Lawrence Fly, chairman of the Federal Communications Commission, on November 2nd said that he had resigned from the government service, effective November 15th, to resume the practice of law in New York.

Mr. Fly is concluding fifteen years of service with the Federal government. He will resume a legal practice which he began in New York with the firm of White & Case on his admission to the bar in 1926. Mr. Fly's announcement was coincident with the closing of hearings on the postwar allocation of radio frequencies, giving rise to the suggestion in commission circles that the development of an over-all plan would be completed by November 15th. Mr. Fly said:

> I have frequently expressed the hope that some day, somehow, it would be possible for government and industry to sit down together, go over the entire spectrum, channel by channel, and come up with a plan which even though it does not entirely satisfy everybody, at least appeals to everybody as a fair and honest structure within the limits set by the spectrum itself.
>
> The record on which the commission will now proceed to consideration of the various proposals will be based upon a record which I feel sure is the fullest and most satisfactory in the history of radio broadcasting.

The last few years of Mr. Fly's administration of the FCC have been stormy. He has engaged in controversies with other members of the commission, with naval officers, Congressmen, and executives of broadcasting companies.

Financial News and Comment

By OWEN ELY

American Water Works & Electric Company, Inc.

(Series of holding company reviews.)

American Water Works controls, directly or through various subholding companies, some 78 water, 6 electric, 1 gas, 3 bus, 5 coal, 1 construction, 2 real estate, and 2 agricultural companies. Some of the electric companies furnish miscellaneous services such as gas, water, ice, etc. Water Works registered as a holding company in 1937, and was the first of the large holding companies to present an integration plan to the SEC. In December, 1937, the commission passed favorably on the four major points of the plan, though it reserved decision with respect to retention of the American Communities Company system. This company had been formed in 1936 to acquire the preferred and common stocks of Community Water Service Company, a holding company controlling about one-third of the water business in the Water Works system.

Disposal of several small farming and real estate companies was called for by the commission. The distribution of voting power in the company and its subsidiaries was not fair and equitable, according to the SEC finding, but the company was permitted a reasonable time to make changes. The plan provided for elimination of West Penn Electric Company, an important subholding company, which controls all the system electric business and about three-quarters of system revenues. But West Penn has a small issue of bonds and three issues of preferred stock (principally held by the public) and its elimination would require retirement of these securities. This could only be done through issuance of additional securities by the top company, American Water Works. The latter originally proposed to issue common stock or convertible bonds, but market conditions have not proved sufficiently favorable in the intervening seven years to permit this financing.

West Penn Electric has outstanding in the hands of the public $5,000,000 bonds, nearly $30,000,000 preferred stocks, and about $5,500,000 $7 class A stock. (The class B and common stocks are all owned by Water Works.) Of the $5,351,430 net earnings of the West Penn Electric system in 1943, Water Works drew only $11,200 in interest and $731,451 in preferred, class A and class B dividends. The amount drawn in class B dividends has varied considerably in recent years; since 1941 about 40 per cent of earnings has been retained in the West Penn Electric system, though only about $1,000,000 of nearly $11,000,000 net current assets is held by West Penn Electric in its own treasury; and it is probable that some of this cash will be used for plant expansion after the war.

In addition to the public interest in West Penn Electric senior securities (which absorb nearly half that company's equity earnings), there is a 14 per cent minority interest in West Penn Power Company, a subholding company controlling Monongahela West Penn Public Service Company and some smaller companies. Moreover, another subholding company, West Penn Railways, has a small bond issue outstanding.

Community Water Service, which controls nearly one-third of the water business of American Water Works, is

	Consolidated Basis			Parent Company Basis		
Year	Times Charges Earned	Times Charges and Pfd. Dividends Earned	Earned per Share Common	Times Charges Earned	Times Charges and Pfd. Dividends Earned	Earned per Share Common
1943	1.26	1.16	$1.10	2.73	1.14	$.13
1942	1.25	1.16	1.06	2.63	1.14	.13
1941	1.26	1.17	1.11	3.41	1.51	.47
1940	1.27	1.18	1.21	3.23	1.45	.41
1939	1.22	1.14	.95	3.45	1.56	.52
1938	1.14	1.05	.38	2.40	1.09	.09
1937	1.25	1.16	1.14	4.58	1.93	.82

In the twelve months ended June 30, 1944, only 52 cents per share was reported earned on the common stock, and on a parent company basis 13 cents.

controlled through American Communities Company, a "paper" intermediate holding company which does not appear to serve any useful purpose. Community Water Service is controlled by ownership at 26,694 shares of the outstanding 39,063 shares of $7 first preferred stock.

No dividend has been paid on this stock since 1932 and hence Water Works is drawing no income from this part of its system, which is not included in its consolidated statements. While voting rights are at present held by the preferred stock, Water Works (through American Communities) also controls about 80 per cent of the common stock.

Revenues of water companies directly controlled by American Water Works amount to about $16,000,000 as compared with about $6,500,000 in the nonconsolidated Community Water Service system. Including the latter, system revenues in 1943 were made up approximately as follows (in millions):

Electric	$50.0
Water (consolidated)	16.0
Water (nonconsolidated)	6.5
Gas	1.0
Railways	2.7
Bus	4.3
	$80.5

Thus, including the Community system, system revenues are about 62 per cent electric, 28 per cent water, 9 per cent transit, and 1 per cent gas.

American Water Works itself has outstanding $11,000,000 debenture 6s and 5s due 1975, $20,000,000 $6 preferred stock, and 2,343,105 shares of common stock. Consolidated and parent company earnings in recent years are shown above.

Canadian Utility Stocks

CANADIAN utility stocks are somewhat difficult to appraise, because of the prevailing discount on Canadian funds, the 15 per cent nonresidence tax on dividends, the recent difficulties over public ownership in Quebec, etc. In the table on page 694, adjustments for the discount and the special tax have been made for stocks traded on the New York Curb Exchange, so as to bring dividends and earnings into monetary adjustment with the price; for issues traded only in Montreal, such adjustment is unnecessary since the price is in Canadian money.

To avoid explanatory footnotes, dividend rates for 1943 were used in the table instead of attempting to estimate final 1944 rates. However, this requires some comment where special changes have occurred, as in the case of Montreal Light, Heat & Power. During the first half of this year that company continued the $1.50 rate of 1943, but the second quarterly payment of 37 cents included 31 cents payable in shares of Southmount

Investment Company. The July dividend was omitted, and the October payment was 20 cents, making the probable total for 1944 only about 49 cents (after adjustment for discount and taxes) together with the Southmount stock. Southmount is currently quoted at about 20 cents (range 30-17 cents) in Montreal. At the current quotation the stock distribution would bring total dividends (New York value) to 64 cents and on this basis the yield on Montreal would be cut to 3½ per cent.

The dividend on Gatineau was increased a year ago from 15 cents quarterly to 20 cents, which would make the current rate 80 cents instead of 65 cents as in the table. Assuming that the dividend for the last quarter maintains the previous rate, the present dividend yield would be stepped up to 6.8 per cent, instead of the 5.6 per cent indicated in the table.

British Columbia Power did not earn the $2 preference dividend on the A stock in 1943, and in April this year the quarterly rate was dropped from 50 cents to 40 cents. On the indicated new rate of $1.60 ($1.23 after adjustment) the yield drops to 7.3 per cent.

Power Corporation of Canada last year paid two 15-cent dividends (in February and June) but this year one 20-cent dividend was paid in July. If no year-end payment is made (which seems unlikely) the yield would be reduced to 2.8 per cent. Ottawa Light, Heat & Power and Canada Northern are maintaining the 6 per cent rate paid last year, and Bell Telephone of Canada is paying its usual $8.

THE expropriation of Montreal Light, Heat & Power and its subsidiaries (Beauharnois Light, Heat & Power and Montreal Island Power) by the Quebec Hydro-Electric Commission under a legislative act has naturally aroused some distrust of Canadian electric issues. Montreal is now selling at only about two-thirds of last year's high price. The bill passed by the legislature provided that "an offer of indemnity" should be made to stockholders by June 13th, but this was delayed and it appears likely that the courts will have to decide the amount to which stockholders might be entitled. In March the company transferred part of its investment holdings (market value $1,391,600) to a new

CANADIAN UTILITY STOCKS

	Where Traded	Price About	Approx. 1944 Range	Adj. 1943 Div.	Yield About	Adj. 1943 Earnings	Price Earnings Ratio
Electric-gas							
Montreal Lt., Ht. & Pr.	C	18	19 - 16	$1.15*†	6.4%	$1.66#	10.8
Gatineau Power	C	9	9 - 7	.50*	5.6	.91#	9.9
Shawinigan Water & Power	C	13	13 - 12	.69*	5.3	.98#	13.3
Winnipeg Elec. B	C	5½	6 - 5½	....	....	.... **	....
British Col. Power A	C	17	17¾- 17	1.53*	9.0	1.57#	10.8
Power Corp. of Canada	C	5½	7 - 5¼	.23*	4.2	.35#	15.7
Canada Northern Power	M	6	9 - 5	.60	10.0	.53	11.3
Ottawa Lt., Heat & Power	M	8¼	9 - 7	.60	7.3	.85	9.7
Southern Canada Power	M	9½	11 - 8¾	.80	8.4	.85	11.2
Communications							
Bell Telephone of Canada	C	142	142-128	6.10*	4.3	7.97#	17.8
Canadian Marconi	C	1⅞	2⅜- 1⅛	.03*	1.6	.04#	47.0

C—Curb.
M—Montreal (Canadian funds).
* Adjusted for 10 per cent discount on Canadian funds, after deducting 15 per cent nonresidence tax.
** Not reported.
# Adjusted for 10 per cent discount on Canadian funds.
† See comment in text.

company, Southmount Investment, apparently to segregate sufficient funds for expense of litigation to protect stockholders' rights. Later, however, the stock was distributed as a dividend.

The company at the end of 1943 had about $18,000,000 worth of marketable securities, and net current assets were over $12,000,000. Its portfolio included various outside holdings including a coke subsidiary, steamships, and properties outside the province. The coke company is owned jointly with Koppers Company and has a good dividend record, but it is not a large enterprise. Montreal's non-operating income in 1943 amounted to only about 19 cents a share on its stock.

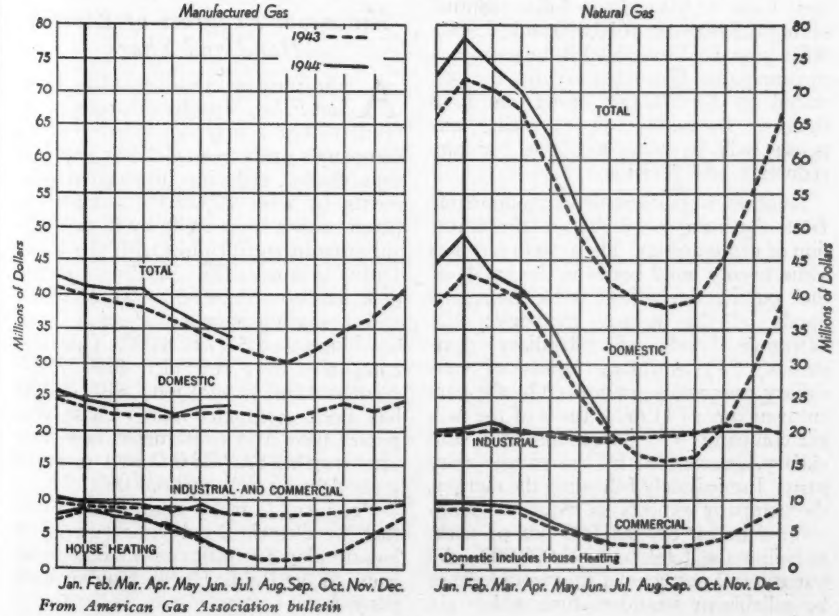
Gatineau, Shawinigan, and Southern Canada operate in Quebec. Power Corporation of Canada and its subsidiary, Canada Northern, have properties in Quebec, Ontario, and other provinces. It is not clear yet whether any or all of these companies may also be affected by the expropriation policies of the present Quebec régime.

Bell Telephone of Canada enjoys the same high investment status as the Bell subsidiaries in the United States. Canadian Marconi, while a steady dividend payer (4 cents has been paid annually in recent years), is obviously highly overcapitalized in relation to operations. It is controlled by Cable & Wireless, the large British concern.

Consolidated Edison Merger Savings

PRESIDENT Ralph A. Tapscott of Consolidated Edison (New York) recently appeared before the public service commission of New York, in connection with the company's application to merge into itself Brooklyn Edison, New York & Queens Electric Light & Power, New York Steam, Westchester Lighting, and

MONTHLY REVENUES OF THE GAS INDUSTRY



From American Gas Association bulletin

Yonkers Electric Light & Power. The extent to which Consolidated Edison is a holding company is perhaps not generally realized. In the twelve months ended September 30th its own operations accounted for only about 57 per cent of system revenues. The parent company reported "other income net" of only $14,688,463, and share earnings on the common stock were only $1.64, as compared with the equity earnings of $1.84.

Minority stock holdings in subsidiaries have been reduced to negligible amounts. At the end of last year Consolidated Edison owned 99.67 per cent of Brooklyn Edison common, 95.17 per cent of the voting preferred and 98.89 per cent of the common stock of New York & Queens, 97.44 per cent of New York Steam common, and the entire stocks of the Westchester and Yonkers subsidiaries. While there is already a complete unification of electric generating and transmission facilities in the system, and centralized operations represent about 80 per cent of operating expenses (exclusive of depreciation and taxes), President Tapscott has estimated that eventual savings of between $650,000 and $1,000,000 a year can be realized if the merger is consummated. Gross tax savings are estimated at $1,250,000, based on 1943 figures. Economies in operating expenses will be made available for rate reduction and revision.

Another important benefit obtainable from the merger will be the simplification of capital setup. The system now has some twenty bond issues in the hands of the public, including: (1) mortgage bonds of the parent company; (2) mortgage bonds of subsidiary companies; (3) mortgage bonds of subsidiary companies guaranteed by the parent company; (4) debentures of the parent company; (5) debentures of a subsidiary, guaranteed by the parent company. Immediately following the merger, the company expects to reduce its long-term debt by $47,000,000 out of cash, reducing the total to $393,000,000. All but about 2 per cent of this would either be callable or would mature within six years. The company plans a 6-year bond refinancing plan, reducing system capital to one type of mortgage bond, the debt ratio being reduced below the present low figure of 37 per cent. The 6 minority stock interests held by the public would be eliminated. Application for a $329,000,000 bond-refunding program (to obtain a rate substantially lower than the present average 3.41 per cent coupon rate), with a single mortgage on all merged property, would be made to the commission following the merger approval. The same mortgage would serve to refund noncallable bonds as they come due. With favorable market conditions continuing, the company would also undertake to refund the $5 preferred stock, following completion of the debt refinancing.

The company stressed that no employee would be dismissed in the merger program and that it intends to rehire every employee on military and wartime leave who expresses a willingness to return.

Financial Progress of Electric Bond and Share

At the meeting October 11th, President S. W. Murphy informed stockholders that nearly one-quarter of the company's preferred stock has now been repurchased, reducing dividend requirements by over $2,000,000. Extensive progress has been made by system subsidiaries in conforming with the Public Utility Act of 1935. Holding company debt has been reduced by $133,915,000, and operating companies' cash assets have increased $117,888,000. Operating companies have refunded $240,779,800 securities and an additional $109,000,000 has been contracted for. These companies have also constructed new property worth $593,985,000 and increased their debt by only $68,839,000.

President Murphy again made it clear that the Electric Bond and Share system has no plan for ultimate dissolution because of the Public Utility Holding Company Act.

INTERIM EARNINGS REPORTS

	End of Period	12-month Period Last	Prev.	Inc. %	3-month Period Last	Prev.	Inc. %
Electric-gas Holding Companies							
American Gas & Elec. *Consol.*	Aug.	$2.27	$2.34	D3	..	..	..
American Power & Lt. (pfd.) *Consol.*	Aug.	7.91	9.71	D18	..	..	..
American Water Works *Consol.*	Sept.	.54	.59	D8	$ .12	$ .11	9
Parent Co.	Sept.	.13	.16	D19	.04	.05	D20
Columbia G. & E. *Consol.*	June	.42	.42	..	.11	..	..
Com. & Southern (pfd.) *Consol.*	Sept.	7.78	9.17	D15	1.61	1.79	D10
Elec. Bond & Share (pfd.) *Parent Co.*	June	4.61	4.24	9	..	..	..
Elec. Pr. & Lt. (1st pfd.) *Consol.*	Aug.	7.07	11.50	D39	..	..	..
Eng. Pub. Service *Consol.*	Aug.	2.09	1.55	35	..	..	..
Parent Co.	Aug.	.65	.55	18	..	..	..
Federal Lt. & Trac. *Consol.*	June	1.62	1.72	D6	.26	.38	D31
Parent Co.	Dec.	1.70	1.43	19	..	..	..
L. I. Lighting (pfd.) *Consol.*	Sept.	8.16(c)	8.05(c)	1	2.32	1.75	33
Middle West Corp. *Consol.*	June	.59(d)	.58(d)	2	.28	.24	16
Nat. Pr. & Lt. *Consol.*	Aug.	.70	.95	D26	..	..	..
Niagara Hudson Pr. (pfd.) *Consol.*	June	13.74	15.91	D8	..	..	..
North American Co. *Consol.*	June	1.85	1.72	8	.39	.40	D2
Parent Co.	Mar.	1.30	1.18	10	..	..	..
Nor. States Pr. (Del.) (pfd.) *Consol.*	June	5.74	6.42	D10	1.23	1.44	D15
Ogden Corp. *Parent Co.*	June	.12(d)	.09(d)	33	..	..	..
Public Ser. Corp. of N. J. *Consol.*	Sept.	.88(e)	.82(e)	7	..	..	..
Std. Gas & Elec. (pr. pfd.) *Consol.*	June	12.70	13.22	D4	2.68	2.87	D7
United Gas Improvement *Parent Co.*	Sept.	.40	...	..	.09	..	..
Consol.	Sept.	.57	...	..	.14	..	..
United Lt. & Rys. *Consol.*	June	1.45(b)	1.68	D14	..	..	..
Electric-gas Operating Companies							
Boston Edison	Sept.	2.13	2.24	D5	.37	.35	6
Central Illinois E. & G.	June	2.13	...	..	..	..	..
Commonwealth Edison *Consol.*	Sept.	1.79	1.73	4	.41	.40	2
Conn. Lt. & Power	Sept.	2.66	2.63	1	.66	.59	12
Cons. Edison N. Y. *Consol.*	Sept.	1.84	1.91	D4	D.01	.07	..
Parent Co.	Sept.	1.64	1.94	D15	.13	.10	30
Cons. Gas of Balto. *Consol.*	Sept.	4.64	4.10	13	.85	.78	9
Delaware Power & Light	Sept.	1.10	1.00	10	.27	.24	13
Derby Gas & Electric	Dec.	2.36	2.56	D8	..	..	..
Detroit Edison *Consol.*	Sept.	1.38(a)	1.32	4	..	..	..
Houston Lighting & Power	Sept.	5.02	5.83	D14	..	..	..
Idaho Power	Sept.	2.57(f)	2.19(f)	17	.69(f)	.60(f)	15
Indianapolis P. & L. *Consol.*	Sept.	1.98	1.94	2	.34	.33	3
Pacific Gas & Elec. *Consol.*	June	2.37	2.26	5	..	..	..
Philadelphia Electric	Sept.	1.43	1.46	D2	..	..	..
Public Service of Indiana	Sept.	1.94	1.95	D1	.46	.46	..
San Diego Gas & Elec.	Aug.	.91	.95	D4	..	..	..
Southern California Edison *Consol.*	Sept.	1.51	1.54	D2	.55	.50	10
Gas Companies							
Amer. Lt. & Trac. *Consol.*	Sept.	1.22	...	..	..	..	..
Brooklyn Union Gas	Sept.	2.38	2.23	7	.34	.30	13
Consolidated Natural Gas	June	3.19	...	..	..	..	..
El Paso Natural Gas *Consol.*	Aug.	3.58	3.68	D3	..	..	..
Lone Star Gas *Consol.*	Sept.	.84	.74	13	D.18	D.16	..
Oklahoma Natural Gas	July	2.82	...	..	..	..	..
Pacific Lighting *Consol.*	Sept.	3.45	3.14	10	..	..	..
Peoples Gas Lt. & Coke *Consol.*	Sept.	4.56	6.31	D28	.68	.98	D30
Southern Natural Gas *Consol.*	June	1.77	1.85	D4	..	..	..
United Gas Corp. (1st pfd.) *Consol.*	Aug.	16.36	18.17	D10	..	..	..
Washington Gas Light	Sept.	1.93	2.38	D19	..	..	..

D—Deficit or decrease. (a) No provision made for liability under rate cuts and/or Detroit municipal tax (in litigation), which might reduce earnings substantially. (b) Assuming dissolution plan of United Light & Power is consummated (appealed to Supreme Court). (c) Before reservation of income. (d) Six months ended June 30th. (e) Nine months ended September 30th. (f) After amortization of plant acquisition adjustments.

What Others Think

NARUC Group Eases Depreciation View

THE much anticipated report of the committee on depreciation was scheduled to be made to the National Association of Railroad and Utilities Commissioners at its Omaha meeting, November 14th to 17th. The committee's recommendations as summarized in the report were as follows:

(1) Depreciation is essentially an economic problem.

(2) Depreciation should be estimated realistically on an age-life basis.

(3) Depreciation accounting, rather than retirement reserve accounting, should be followed.

(4) While the usefulness of the sinking-fund method in certain accounting and rate situations is recognized, under ordinary circumstances the straight-line method is generally preferred for accounting, financial, and regulatory purposes.

(5) Correction of inadequate reserves is important, but their immediate adjustment is not necessary unless deficiencies are substantial.

(6) Where immediate reserve adjustments are called for, corrections should, as a matter of principle, be made through surplus; but this principle cannot be applied rigidly or without consideration of the circumstances of the particular case.

(7) If the equities of the case clearly indicate that adjustments of reserve deficiencies should be made over a reasonable transitional period, the method of correction should be set forth clearly.

(8) Consistency between the allowance for depreciation expense and the deduction for accrued depreciation is essential in the rate-making process.

(9) The reserve requirement, properly determined, is an appropriate measure of depreciation; ordinarily it is the best practical measure available.

(10) In rate proceedings the proper deduction for depreciation may be either the reserve requirement or the book reserve, depending upon all the pertinent considerations—historical, equitable, and economic—of the particular case.

(11) Deduction of the book reserve may or may not result in a declining rate base, but under ordinary circumstances will not result in the disappearance of the rate base except at the point of abandonment of service, and its deduction is not unfair to the utility and its investors.

(12) While inability to invest idle depreciation funds promptly may require recognition in unusual cases, no fundamental modification of principle is called for on this account, nor does such a situation require either the earmarking of reserves or the allowance of a special fee for investment management.

OTHER features of the report will include a mildly critical appraisal of the Edison Electric Institute proposal; a defense against the charge that deduction of straight-line depreciation could result in a diminishing rate base which might reach the zero point; a reaffirmation of the committee's 1943 definition of depreciation; and a defense of the use of the age-life basis. The EEI plan if rightly followed, the committee concedes, would eventually wind up with about the same charges for depreciation as the committee's age-life methods, but is condemned for lack of certainty of procedure and objective standards. The committee agrees that the use of age-life basis for estimating depreciation should not be interpreted as permitting an arbitrary averaging of the experience of a number of similar type utilities to arrive at uniform composite depreciation rates. The use of such data, it is suggested, should reflect consideration of local operating conditions.

The report was agreed to by all members of the NARUC Depreciation Committee, headed by Commisioner Nelson Lee Smith of the FPC. One of the members, on active duty with the armed services, did not have a final opportunity to

concur but was reported to be in substantial agreement.

At the recent convention of the American Bar Association, a special committee of the section of public utility law reported on the 1943 NARUC depreciation report. The ABA special committee was headed by A. J. G. Priest, New York city attorney. This ABA report is somewhat critical in its analysis of the 1943 depreciation document and makes briefly the following points in substance:

1. That in view of the varied historical use of all three treatments of depreciation by regulatory authorities (retirement, sinking-fund, and straight-line), it is suggested that the "straight-line method is not a panacea but, on the other hand, it may in a given case adversely affect the interests both of ratepayers and of investors." The ABA committee intimates that regulatory authorities should continue to be left free to apply different techniques to different types of utilities and to differently circumstanced utilities in the same field.

2. The retroactive application of straight-line depreciation would result in unconstitutional taking of private property and in the depletion and possible impairment of the surplus of companies involved in amounts never collected by them through revenues derived under legal rate schedules. It was pointed out that it might conceivably result in the insolvency of a great proportion of American private utility industry which has been practicing a retirement reserve accounting and which is operating satisfactorily. Such well-managed properties, it is submitted, should never be rendered bankrupt overnight by a sudden shift in the regulatory requirement.

3. Of the four alternatives for complying with the requirement of a retroactive creation of a depreciation reserve—(a) transferring surplus to such reserve; (b) reduction of capitalization to create surplus for such transfer; (c) diversion of future income for accumulation of reserve; (d) increasing rates to establish reserve—the increased rate method is suggested as the least injurious if such a necessity absolutely exists. But the ABA report rejects the assumption that a great need exists in the public interest for the creation of reserves in the amount and character proposed by the 1943 NARUC committee report.

4. Depreciation reserve should not be deducted from the rate base, whatever the implications of the Supreme Court decision in the Hope Natural Gas Case.

FPC Issues Statistical Survey on Electric Companies

On October 29th the Federal Power Commission announced the publication for the seventh consecutive year of its annual report "Statistics of Electric Utilities in the United States," which presents, for the year ending December 31, 1943, detailed financial and operating information on the 347 major privately owned electric utilities in the country. These utilities, which had total assets on their books aggregating $18,136,827,975 at the end of 1943, represent in excess of 98 per cent of the entire privately owned electric utility industry in the nation on the basis of either assets or revenues. The 1943 edition also contains composite financial statements of the companies for the years 1937 through 1943.

The new publication shows for each utility in detailed, uniform tables: balance sheets, income and earned surplus statements, capital stock and bonds, electric operating revenues, customers, and sales by classes of service, electric operating expenses, utility plant, and physical quantities. The uniformity of treat-

ment accorded the statements of the various companies will generally permit ready comparison of items among the utilities included in the compilation.

The statistics shown in the volume announced in October are the most authoritative data available and have been compiled from reports filed with the commission by all electric utilities receiving annual electric revenues of $250,000 or more, whether or not otherwise subject to the commission's jurisdiction.

COPIES of the 500-page 1943 edition of "Statistics of Electric Utilities in the United States," which is bound in blue cloth, and may be referred to as "FPC S-36," are sold by the Federal Power Commission at $2 each. A 10-page summary entitled "The Financial Record of the Electric Utility Industry" for the years 1937 through 1943 is available free upon request to the commission.

This 6-year summary shows in brief the following developments:

1. Kilowatt-hour sales increased 75 per cent, generating capacity 22 per cent, number of customers 15 per cent, and electric revenues 38 per cent.

2. The very large increases, indicated by the foregoing figures, were accompanied by an increase of only 7 per cent in plant investment. Net plant investment, after deducting reserves for depreciation, actually decreased during the period. The average investment in plant per dollar of revenue, which was $5.47 in 1937, was $4.28 in 1943. Similarly, net investment was $4.88 per dollar of revenue in 1937, and $3.55 in 1943.

3. Some four hundred million dollars of inflation were eliminated from the utility plant accounts. Orders of the Federal Power Commission alone authorized or required the disposition of amounts in excess of original cost aggregating more than three hundred million dollars.

4. Depreciation reserves have been increased by more than one billion dollars or slightly in excess of 70 per cent.

5. In spite of increased operating expenses and taxes, net earnings available for investors have been maintained at a remarkably constant level. The ratio of gross income to capitalization and surplus was the same in 1937 and 1943, 5.8 per cent. The average ratio for the entire period was also 5.8 per cent.

6. Outstanding indebtedness has decreased and the ratio of long-term debt to gross investment in utility plant has fallen from 50 to approximately 44 per cent. The ratio of long-term debt to net plant decreased from 55 to 54 per cent.

7. Interest charges which were covered 2.97 times in 1937 were covered 3.35 times in 1943.

8. Published yield averages based on market prices of selected public utility bonds were reduced from 4.03 per cent in 1937 to 2.99 in 1943.

9. More than two billion five hundred million dollars, representing accruals for depreciation and amortization, together with the balance of earnings after payment of dividends, were invested in property additions and replacements or utilized to retire outstanding securities.

10. Facilities were greatly expanded without necessity for the issuance by the industry as a whole of additional securities to finance construction. In fact the book amount of outstanding stocks and long-term debt decreased by some three hundred million dollars.

The improvement in the financial position of the electric utilities was due in considerable measure, it was suggested, to the strengthening of regulatory controls, particularly the enforcement of the new uniform systems of accounts during the period under review.

Do Antitrust Laws Control Utility Status?

"NEWS-GATHERING agencies are not public utilities and should not be made such by judicial action," the Associated Press said on October 23rd in a brief asking the United States Supreme Court to reverse a lower court ruling that the AP must change its bylaws.

The brief, submitted in an appeal from a summary 2-to-1 decision October 6, 1943, by a special Federal 3-judge court of the southern district of New York, concluded that "so grave a step as transferring the press from the field of private enterprise to the status of a regu-

lated public utility is the last thing which the courts should do on their own motion —and the last thing that should be done at all so long as any possible alternative exists."

The appeal was the latest development in the government's civil suit, under the Sherman Antitrust Act, to force the Associated Press, a coöperative, nonprofit organization, to change its membership structure and make its news report available to any applicant. Named as defendants in the suit, in addition to the AP, were its eighteen directors and the approximately 1,200 other members in the United States as a group.

The government was given until November 6th to file its brief and the AP's reply brief was scheduled to be filed the week of November 13th, the week when the Supreme Court was to hear the case. The AP brief said:

> The majority of the court below arrived at this public utility result by the intermediate step of finding, not in terms but in effect, that a successful news agency is bound to admit all applicants on equal terms —and violates the antitrust laws if it does not do so.

THE decision would make the AP "in effect a public utility and subject to regulation as such," the brief asserted, despite many previous court decisions that "news agencies are not public utilities" and despite "the public policy which underlies the first amendment—that, so far as humanly possible, the press should be left free."

The effect of the decision "and the public utility principle on which it is based," the brief continued, "means that the court has assumed permanent supervision over the AP and, by a parity of reasoning, over other comparable news-gathering agencies," and: "It is the belief of these defendants that submission to the public utility principle . . . would be a first step toward becoming a subservient instrumentality of the government." The brief said the decision had the effect "of imposing an obligation upon the AP to admit competitors of members in that it required that any new bylaw shall affirmatively declare that the effect of admission upon the ability of an applicant to compete with members shall not be taken into consideration in passing on his application."

The district court also restrained the AP, until it should revise its membership regulations, from enforcing certain other bylaws intended to prevent disclosure of AP news to nonmembers, although the latter bylaws were not held illegal in themselves.

The brief recalled that the district court found that the AP did not "monopolize or dominate" the gathering or distribution of news, that other adequate news agencies were available to newspapers lacking AP service, and that the AP never had "held itself out to serve all comers."

"To be truly free—to perform its true function—the press must be both bold and fearless," the brief contended. "It is inconceivable that true freedom of the press could exist if the press were subjected to such controls."

Transit Association Holds "Convention In Print"

FOR the second time in its history, and for the second successive year, the American Transit Association held its annual business meeting and convention in print. In each case, this policy was adopted at the request of the Office of Defense Transportation in accordance with its program of conserving rail transportation.

The 1944 "convention in print" was held in two sessions—the first was published in the October 27th issue of *Passenger Transport* and the second was distributed with the November 3rd issue of *PT*.

In opening the 1944 convention in print, Colonel J. Monroe Johnson, Director of the Office of Defense Transportation, stated the case for transit's push to victory quite bluntly when he said: "No group of Americans knows better than the American Transit Association the importance of transportation in the war we are so successfully waging." Picking up from there, Guy A. Richardson, assistant director of ODT and chief of its highway transport department, set the course for victory by expanding the basic idea that we cannot afford to let up now. "Until Germany admits defeat," Mr. Richardson said, "nobody can say where we go from here. In fact we can do little except 'hold the line' and plan for the future."

The presentation of "The Transit Industry's Outlook and Opportunity"—a report by the association's retiring president, E. D. Merrill of the Capital Transit Company—was not only a statement of his stewardship in heading the 1943-1944 administration, but a projection of sound thinking into the problems facing the industry in the immediate future. In speaking of his close association with ATA's organization, Mr. Merrill said: "It is with great regret that I look for-

ward to a lesser degree of association with the members and staff of the American Transit Association."

With the opening addresses over, and the business of electing next year's officers completed, the 1944 convention in print really gets down to work with a statement by the incoming president, Colonel Roane Waring, on an important subject of current interest to all—"After Our Men Come Marching Home, What Then?" In emphasizing the importance of this postwar issue, Colonel Waring made the following point: "In its last analysis, it is industry and not government that must finally solve this problem. It is industry's responsibility. It is an undertaking that must be met and accomplished."

The all-important subject of public relations was given splendid treatment by three men, each well qualified in his respective field. Ralph Champlin, director of public relations, the Ethyl Corporation, and Louis J. Mathieu, chairman of ATA's committee on public relations, discussed the same subject—"The Modern Concept of Public Relations"—with the result that Champlin brings emphasis to the point that "The Boss Is the Public Relations Man," while Mathieu bases his case on his observance that "Performance Determines Public Relations." And there you have it, two valuable aids to your thinking on the subject.

Opinion sampling, that fact-finding adjunct necessary to any public relations program, was treated by none other than Harold D. Read of Opinion Research Corporation, who has had so much to do with the development of the modern technique in sampling campaigns. In "What Do People Think about Your Service?" Mr. Read has given transit management much to think about indeed.

The first session of the 1944 convention in print wound up with two symposiums. In one, "Transit Vehicle Improvement Plans," A. F. McDougald, W. E. P. Duncan, and A. H. Leschke collaborated in bringing the most up-to-date ideas on vehicle design before the industry, and in the other, engine designers, fuel and lubrication experts discussed in some detail "Postwar Fuels and Lubricants."

The ATA even managed to elect new officers by circulating ballots through the mail and officially recording the results in the "convention in print." Results of the balloting brought Colonel Roane Waring, general counsel of the Memphis Street Railway Company, to the president's chair and Gordon G. Steele, president of the Portland Traction Company, to the vice presidency. E. A. Tuson, general auditor of Public Service Coördinated Transport, was returned to the treasurership. H. L. Bollum, president of the Springfield Street Railway Company; Fred A. Nolan, general manager of the Chicago Surface Lines; and Frank Geisler, vice president of Transit Buses, Inc., were elected to 3-year terms on the executive committee as members at large.

Chairmen, vice chairmen, and members at large of the administrative committees of the six ATA divisions were likewise voted upon and elected in accordance with the recommendations of their several nominating committees.

The Electric Power Industry and Agriculture

In the autumn number of the *Harvard Business Review*, Clyde O. Ruggles, professor of public utility management and regulation, focuses on the economic risks faced by power utilities in serving the industrial market and in developing the rural market. Professor Ruggles discusses the need for taking these risks and says they must be taken into consideration in determining rates and deciding on a "fair return" to the utilities.

In connection with the rural market, Professor Ruggles is led to examine the prospect for rural industries using agri-

cultural products and agricultural residues.

Viewed in this light, these sections of Professor Ruggles' article seem also to deserve independent status as a contribution to the vexatious subject of the farmer's plight. Professor Ruggles' summary and conclusions are as follows: (1) With respect to expansion of industrial service:

> There is an important economic risk involved in furnishing power to industries whose demands for power vary greatly between periods of business booms and depressions.
>
> This risk is increased if industrial power rates are decreased in boom times in order to reduce a public utility's over-all rate of return, since lower industrial rates will stimulate the demand of industries for power, which in turn will make further expansion of utility plants necessary—an expansion that is likely to be made at the higher costs usually prevailing in periods of marked industrial activity.
>
> Moreover, commissions are unable to increase a public utility's rate of return during depressions by increasing industrial rates, since such action will cause industries that are able to generate their own power cheaper than they can purchase it to install their own power plants; it is against the best interests of domestic and commercial consumers to lose these companies as customers. Because a commission is powerless to increase the utility's rate of return during depressions by increasing industrial rates, it should balance increases of revenue from industrial customers in periods of prosperity against the falling off of revenue from industries during depressions.

With respect to rural electrification the summary of the article continues:

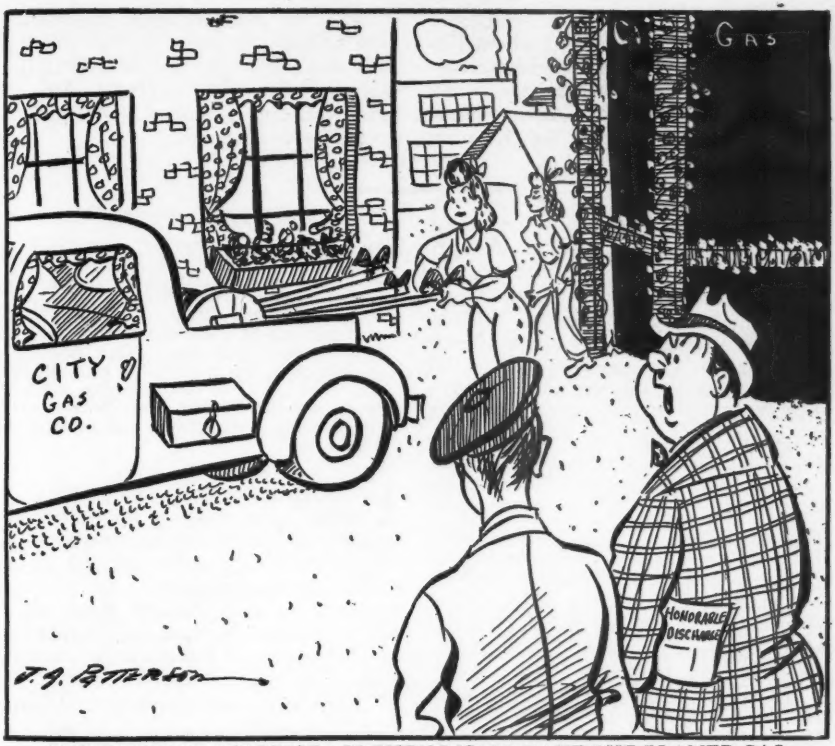
> With regard to rural electrification, both utility commissions and public utilities early made the mistake of expecting the farmer to draw upon his small cash income to assist in financing the extension of rural lines. When the farmer's limited cash funds were used to extend rural lines, he was unable to purchase major equipment and appliances which would have enabled him to increase his income and reduce the unit costs of the power he would have used. The Rural Electrification Administration now makes loans not only to finance the construction of rural lines (to be repaid in twenty-five years), but also to finance the wiring of farms and the purchase and installation of various sorts of electrical equipment and plumbing (to be repaid in instalments over five years).
>
> Because it takes a period of years to develop rural markets, commissions ought to balance the risk incurred during the market development period against the later more remunerative years in determining a fair rate of return on this part of a utility's business.

Professor Ruggles says both utility managements and regulatory bodies must appraise the probable impact on rural electrification of the long-range program provided for by Congress to further the use of agricultural products for industrial purposes.

Under this heading he discusses the trend toward the use of farm electric machinery caused by labor shortage. Water pumping, for example, increases production which in turn increases the need for more farm machinery to take care of increased farm production—milk, eggs, hogs, etc. He envisions a rural demand for power service that will enable farmers to make their own electric welding repairs. He discusses the possibility of expanded use of farm deep-freeze lockers. Much early farm wiring might have to be reworked to take care of such increased farm loads. Decentralization of industry itself to use agricultural products as electric power becomes more generally available through rural areas is noted as a likely trend.

Finally, Professor Ruggles points out that recent Supreme Court decisions have given the state commissions greater latitude in the making of reasonable rates.

This in turn should result in better pay and more adequate staffs for the commissions so that they may measure up to their new responsibilities. Federal regulation also should be integrated and conflicts now inherent in its policies eliminated. Federal regulation itself, it is suggested, "should also be decentralized," if it is to deal with the economic aspects of the electric power industry in a country as large as the United States.



"WOULDN'T BE SURPRISED IF THEY DIDN'T HAVE THE BLAMED GAS SMELLING LIKE CHANEL NO. 5."

New Burns & McDonnell Directory Available

THE new eighth edition of "Results of Publicly Owned Electric Systems," published by Burns & McDonnell, engineering concern of Kansas City, Missouri, is now available for general subscription. The latest edition is up to the excellent standards of the Burns & McDonnell editors. It is a reference work of considerable assistance to utility executives and operators, public utility regulators, educators, and others whose work brings them into contact with the financial and technical performance of the leading municipal plants in the United States. In addition, the book contains much interesting comparative information on Federal power projects, taxation, and other policy matters.

In its special field as a reference work for municipal plants, however, the Burns & McDonnell volume achieves its greatest value and is in a class by itself. The new volume shows the rates, operating records, revenues, bonded indebtedness, and other information pertaining to 767 publicly owned utilities. More than 100 cities have been added in this volume. More than one-half of the cities have changed their rates since the former edition was published.

The publishers have gone to great pains and expense to secure accurate information and verify it. Every city in the country with a municipal electric system, from the largest down to 1,000 population, was solicited; and the vol-

ume contains every record received. Consequently, the information contained in this book is a fairly representative cross-section of the results of publicly owned lighting systems located in this country. A comparison is made of the operating statistics of steam, hydro, and Diesel installations.

In short, this volume is a *must* in the reference section of any up-to-date library, however modest, on public utility operations or economics.

Johnston Warns on "Superstate"

WARNING of the dangers of a "superstate" in this country, Eric A. Johnston, president of the United States Chamber of Commerce, predicted in Easton, Pennsylvania, on October 27th that a giant conflict would take place in the world after the war between collectivism and individualism, and between autocracy and democracy. Education, he said, must provide the final answer, and must shoulder "the terrific responsibility" of teaching people how to be free.

Addressing the final session of a 3-day institute at Lafayette College, Mr. Johnston spoke at the Founders Day convocation, where he received an honorary doctor of laws degree.

Millions of people, Mr. Johnston said, had been struggling to free themselves from political and economic domination, seeking freedom to work out their own destinies in their own way. After the war ended, this struggle would be intensified, he said he feared. He continued:

> Everywhere the tide is running strong toward government control, government domination, government ownership. All over the world man is uncertain, confused, frightened. He is throwing his problems back upon the government. The very genii of government, which throughout the ages he has struggled bitterly against, he is relinquishing and assigning his economic freedom to the state.

Discussing the trend toward collectivism and state control, Mr. Johnston referred to Russia, England, France, and "many of the liberated countries" where, he said, the people relied or were beginning to rely more and more upon the government.

Mr. Johnston further observed:

> In Russia there is only one employer, the state. In America there are millions of employers. In Russia if a worker gets in dutch with his boss, he is out of luck. In America if a worker gets in dutch with his boss, he goes around the corner and gets another job. Can you have real economic freedom in the American sense when there is only one employer? In Russia they said "yes." I said "no."

IN England the "rising tide of collectivism" was creeping up, with both industry and labor seeking governmental protection, Mr. Johnston asserted. The proposed economic program for postwar development was seeking government aid everywhere, he went on. Could maximum freedom of movement be attended with artificial assistance? he asked.

"The liberated countries seem to think 'yes,'" he asserted, "but I would say 'no.'"

From the earliest days of this nation, the superstate has been the antithesis of the American concept of democracy, he continued, adding that "our forefathers knew the dangers of this superstate." Officials and bureaucrats, carrying out their economic tasks for the government, did not become any wiser or better by virtue of titles and impressive powers, he remarked—they were merely more "irresponsible," while their mistakes were "on the house."

This epic contest between the state and the individual could not be determined by party labels, religious or geographic lines, Mr. Johnston declared, as it was not a vertical but a horizontal struggle.

The question which must be decided, he said, was this:

> Shall we follow the new-fashioned liberal whose flaming banner proclaims—"man be-

longs to the state; the state will protect him; the state will employ him for the benefit of the state." Or, shall we follow the old-fashioned Jeffersonian liberal whose blazing banner of many struggles proclaims —"the state is but the servant of man to be used for his greater achievements and freedom!"

Prominent educators, businessmen, religious leaders, and labor representatives attended the session.

Three-cent Sea-air Mile Rate Foreseen

TECHNOLOGICAL improvements and volume operations, already in sight, appear to assure attainment of a 3-cents-a-mile level of fares for air travel within ten years after the close of the war, Dr. J. Parker Van Zandt reported recently in a study of "Civil Aviation and Peace" for the Brookings Institution.

Stating that the 3-cent rate would generally be less than the minimum third-class fare on a surface vessel, he said that it would make overseas air trips possible annually for about 4,000,000 Americans in the $3,000 to $10,000 income bracket. The New York-Paris round-trip fare, with a 10 per cent discount for the return journey, would be $198 and "no interesting place on earth would be more than two days away."

Pointing out that if the average journey abroad in 1955 should be about 7,500 miles, the 4,000,000 Americans would fly about 30,000,000,000 passenger miles a year, the report continued:

> The volume of operations is more than eighteen times the total passenger miles flown by all American-flag air lines in 1941 in both domestic and international service. It is close to the total intercity common carrier passenger traffic by rail, bus, and air in the United States in 1940.

It was estimated that the air travelers, exclusive of fares, would spend abroad annually about $1,000,000,000, which would aid other countries in meeting their dollar obligations for goods bought here.

FOR the maximum postwar development of international air transport, Dr. Van Zandt advocated a positive policy of coöperation between the allied and associated nations; contending that the economic effect would be an important factor in the maintenance of peace. He stated:

> A mutually beneficial international air transport policy would promote American travel in foreign countries.
>
> Control of international air transport alone would offer little promise of security, inasmuch as it constitutes such a minor part of the aviation industry as a whole, which is predominantly domestic.
>
> It would be politically impossible to establish the necessary regulation over domestic aviation.

Restrictions proposed in the recent British White Paper for maintaining peace and limiting commercial competition, he said, would be ineffective in the first instance and impracticable in the other.

Restrictions by the fixing of "quotas" would be impracticable as well as undesirable, he added, because countries whose aviation was not well developed would want their quotas raised while countries where aviation had made greater strides would insist upon retaining their achieved status.

In discussing Germany's postwar aviation Dr. Van Zandt urged that all flying within Germany be limited to non-German aircraft, flown by non-German pilots and crews, under the regulation of a joint civil air commission composed of nationals of former occupied and Allied nations.

This policy, along with a strict prohibition against the manufacture of aircraft in Germany, he argued, would be a vital factor in preventing Germany from rearming.

Public Auditing Suggested for U. S. Accounts

INDEPENDENT public audit of Federal accounts and financial transactions, with the auditors reporting directly to a joint committee of Congress, was one of ten specific changes in United States auditing, accounting, and reporting systems which were recommended on October 17th by Lloyd Morey, controller of the University of Illinois, in a speech before the fifty-seventh annual meeting of the American Institute of Accountants in St. Louis.

Professor Morey, a member of the institute's committee on governmental accounting, charged that although the government has more accounts than any other single enterprise in the world it does not have a coördinated, efficient, and informative accounting system. He also asserted that while the United States government issues more financial reports than any other agency or organization, such reports are "incomplete and uncoördinated, and in no instance provide a single, concise, and comprehensive summary of the over-all financial operations and condition of the government."

Changes needed in the Federal auditing, accounting, and reporting setup were enumerated by the speaker as follows:

Accounting and financial reporting should be recognized as administrative responsibilities.

Administrative departments and agencies should be held responsible for keeping adequate accounts of their operations.

Minimum accounting and reporting policies should be promulgated and supervised by a central executive agency.

Responsibility for expenditures should be placed in the administrative agency subject to independent post audit.

The process of disbursing should be simplified and accounts should be settled in the field to the fullest extent possible.

There should be an independent post audit of the transactions, records, and reports of every department and agency.

Post audits should be carried out in such a way as to provide as prompt a review as practicable in every case, and they should be made at the seat of operation in each department and agency.

Auditing procedures should correspond in general and be at least equal to those employed by public accountants.

A central executive agency should be charged with the responsibility of providing a central summary of accounts for which information would be supplied by the administrative and other operating agencies.

Professor Morey also believes Congress should provide a joint, standing committee of the two houses to receive reports of the independent auditing agency and to act promptly and continuously on these reports.

"THE first thing . . . for us to write down about American industry's contribution to and coöperation with the present war effort is that its effort was voluntary, and that, as I see it, is the spring which makes the wheels go 'round. We do not intend, therefore, to lose the independence and the freedom of individual action which have been the motivating force of our industry in this war."

—J. FRENCH ROBINSON,
President, American Gas Association.

The March of Events

President Gets River Plan

PRESIDENT Roosevelt last month received from the Army Engineers and the Reclamation Bureau a combined plan for development of the Missouri river basin. Details were not disclosed, however, nor was it known whether all differences between the two agencies had been dissolved.

The President was expected to make the report public soon, along with a statement of his own views.

The Army Engineers and the Reclamation Bureau have been working for several months to settle differences between their individual plans for harnessing the Missouri.

The plan of the Army Engineers for a $490,000,000 Missouri river project—incorporated in a Flood Control Bill—has already passed the House and was expected to come up in the Senate after Congress reconvenes this month. The Reclamation Bureau proposal, to cost an ultimate estimated $1,257,000,000, has been introduced in both the House and Senate but has not been reported out by committees of either branch.

A closed meeting of field engineers of the Army and the Reclamation Bureau was held in Omaha last month to work out details in combining Missouri river plans of the two agencies.

Senator O'Mahoney, Democrat of Wyoming, chairman of a reclamation subcommittee, has been conducting hearings on the Reclamation Bureau's plan and it was understood he expected to seek its incorporation in the Flood Control Bill when the Senate considers that measure. O'Mahoney and others are desirous of having both plans authorized and adjusting differences when actual construction begins.

The Army plan is based on a system of levees and other works from Sioux City, Iowa, to the mouth and construction of 12 multiple-purpose reservoirs to cost $410,000,000.

The Reclamation Bureau's plan stresses projects on the tributaries and would give irrigation preference over navigation where conflicts develop.

Any "unified plan" for development of the Missouri river basin should not adversely affect the use of water for irrigation in upstream states, President Roosevelt recently advised O. S. Warden of Great Falls, Montana. The President's statement, released by Warden as president of the National Reclamation Association, was in response to a letter by Warden "because some confusion of understanding has followed your message to Congress . . . in which it was stated that you were in hearty accord with the principles adopted and approved by the Missouri River Nine States Committee meeting at Omaha" recently.

Warden wrote that the nine states at Omaha agreed: That there should be an over-all unified plan for development; that the President and Congress be urged to direct the United States Army Engineers and the Reclamation Bureau to submit such a plan of coördinated engineering to Congress; that no matter what unified plans were agreed on, nothing should be done which would adversely affect the use of the water for upstream irrigation.

Warden wrote that "you quite definitely approve point No. 1, and appear favorable to a modification of point No. 2," but "there is some confusion and friendly concern lest you may have overlooked the importance of the third measure."

In his answer, President Roosevelt said:

"We (the administration) have continually encouraged and favored support for such development of the land and water resources of the western states as would most benefit each region affected and the country as a whole. I think that record is clear. It has always been progressive. Whatever agency carries through a unified plan in the development of a watershed, such as is now under consideration for the Missouri river basin, it should be so done as not to affect adversely the use of water for irrigation in the upstream states."

Coal Men Join FPC Probe

THE Anthracite Institute has filed a request with the Federal Power Commission to be heard at its forthcoming natural gas investigation, it was announced on November 1st.

Among others submitting similar requests are the Association of American Railroads, American Short Line Association, National Coal Association, New York Retail Coördinator, Eastern States Dealers Conference, and certain labor organizations.

Responding to FPC's recent order requesting statements of matters to be covered in the investigation, the institute concurred with the commission in the "advisability of investigating the probable life of natural gas reserves, measures for preventing waste, present and future uses of natural gas, extent and char-

acter of competition with other fuels, and determination of needed legislation."

Particular emphasis was laid on the possibilities inherent in the conversion of the "Big- and Little-Inch" lines from oil to natural gas, the institute said.

Offers Amended Plan

TRUSTEES of Central States Electric Corporation recently filed with the United States District Court at Richmond, Virginia, an amended plan of reorganization, providing for establishment of a new company whose stock would be distributed to debenture holders as part payment of their claims, totaling about $21,000,000.

The amended plan would lodge with the new company the bulk of Central States Electric's assets, comprising chiefly stock in American Cities Power & Light Corporation and Blue Ridge Corporation. The trustees would reserve assets having a value of about $600,000 to cover reorganization expenses, including expense of conducting an investigation ordered by the court into stockholder claims against the former management.

Any recoveries from stockholder suits against the former management, together with that portion of the assets remaining with the trustees, would be distributed to cover the balance of creditor claims, with any residue of assets accruing to stockholders of Central States Electric.

Prepared in coöperation with the Boyce committee representing debenture holders, the plan will be considered by the court. Hearings on the reorganization are scheduled for December 4th.

OWU Merges Gas Divisions

THE natural gas division and the manufactured gas division of the Office of War Utilities, WPB, have been consolidated into a single gas division, Edward Falck, director of OWU, announced recently.

Paul Taylor of New York city, who had been director of the natural gas division, resigned to return to private industry, Mr. Falck said. Alexander Macomber of Boston, director of the manufactured gas division, has been designated director of the new gas division. A. W. Lundstrum of Maplewood, New Jersey, deputy director of the natural gas division, has been designated deputy director of the gas division.

Easing of Controls Protested

THE Office of Price Administration has joined forces with fuel oil interests in protesting against relaxation of restrictions on artificial gas distribution as "unfair discrimination" against both oil and coal consumers and suppliers, it was recently reported in the *Journal of Commerce*.

In addition, the Smaller War Plants Corporation, the Petroleum Administration for War, and indirectly the Solid Fuels Administration, are also currently investigating the matter. All were reported as "sympathetic" with the complaints lodged by the oil industry.

OPA's protest, it was understood, was made in a letter to the War Production Board, expressing fear that lifting of artificial gas distribution controls on artificial gas—made from rationed fuel oil and high priority coal—may threaten its fuel oil-rationing program because of its inherent unfairness to direct consumers of rationed oil.

Officials of the Smaller War Plants Corporation were also reported to be giving the matter their attention, although they were not certain whether problems of distribution are within their jurisdiction. If the agency decides to take a stand on the issue, it was expected to be on grounds that public utility companies should not be given an unfair advantage over small business oil and coal marketers.

Oil men's hope for action was said to center on Secretary Ickes, who, in his capacity as both Petroleum Administrator and Solid Fuels Administrator, is in the position to curtail shipments of high priority coal and rationed fuel oil to utilities for the manufacture of additional gas.

Buys Idaho Properties

PURCHASE of the $2,250,000 Boise Water Corporation of Idaho, and subsidiaries, Natatorium Company and Kellog Power & Water Company, by the Arkansas Municipal Water Company, with headquarters in Pine Bluff, was announced by J. R. Pierce, vice president and general manager, on October 31st. The Boise Water Corporation supplies 8,600 customers in Boise and suburbs and has an annual gross revenue of about $260,000.

General offices will be maintained in Pine Bluff. The Arkansas Municipal Water Company, organized in 1942, has purchased properties of the Arkansas Power & Light Company in 18 cities and towns, as well as properties in Sedalia, and Jefferson City, Missouri.

Negotiations were reported under way for the purchase of additional water properties.

Files Report

BARTHOLOMEW A. BRICKLEY, special counsel appointed by Federal Judge Francis J. Ford, recently filed in the Federal court in Boston a report on his inquiry into the relationship between International Paper Company and International Hydro-Electric System. The report was submitted in connection with the application of the Securities and Exchange Commission to enforce its order that International Hydro-Electric System be dissolved under provisions of the Public Utility Holding Company Act.

Mr. Brickley's report recommended that legal proceedings be instituted by International Hydro-Electric System against its former parent, International Paper Company, either in the U. S. District Court or in the Massachusetts state court.

Line Starts Pumping Gas

THE largest pipe line of its kind in the world on October 31st began pumping its daily output of 200,000,000 cubic feet of natural gas from Texas fields to the industrial Pittsburgh - Youngstown - Cleveland area, where natural gas shortages in the past have necessitated plant shutdowns.

The pipe line also extends as far north as Syracuse, New York, and traverses seven states. The 1,265-mile-long line was built by Tennessee Gas & Transmission Company at a cost of $54,000,000 and 25,000,000 man-hours.

Gas for the line is supplied by Chicago Corporation, whose president, Richard Wagner, informed the Federal Power Commission that his company would supply the necessary gas and would insure adequate financing of the Tennessee Company.

Following issuance of a certificate of public convenience by the commission, Chicago Corporation purchased 90 per cent of the Tennessee Company's common stock and placed one of its officers in charge as president.

The first pipe was welded on January 10th and the final tie-in was completed October 30th in Tennessee, in answer to the War Production Board's plea that the new line be completed in time for operation during the coming winter "to prevent interruption in war production that would otherwise occur."

Dissolution Planned

THE United Light & Railways Company on November 1st filed with the Securities and Exchange Commission a plan for the liquidation of American Light & Traction Company.

As an initial step, American Light was to deposit $13,408,100 in trust for the redemption of 536,324 shares of outstanding 6 per cent cumulative preferred stock at the par value of $25 a share plus accrued dividends.

After the redemption, American Light would distribute its remaining assets among holders of 2,768,050 shares of common stock.

A detailed plan of distribution would be filed with the commission at a later date.

Among preliminary transactions contemplated are:

1. The recapitulation of Milwaukee Gas Light Company and Madison Gas & Electric Company and the refunding of their first mortgage bonds and preferred stocks.

2. The transfer of Milwaukee Solvay Coke Company's property and assets to Milwaukee Gas Light.

3. The disposition of real estate owned in Michigan by American Light and in Wisconsin by Consolidated Building Company, Milwaukee, and the liquidation of Consolidated Building.

4. The sale of American Light's investments in American Coal Company, San Antonio, Texas, to nonaffiliated interests.

5. The organization of a new company to construct, own, and operate a $70,000,000 natural gas pipe line from Hugoton gas fields in Kansas, Oklahoma, and Texas to an eastern terminus in Detroit, with a branch running from Illinois into Wisconsin to furnish natural gas to communities served by Michigan Consolidated Gas Company, Milwaukee Gas Light, and Madison Gas & Electric, as well as other towns in Illinois, Iowa, and Missouri. The greater portion of American Light's investment in Detroit Edison Company's common stock would be used to finance the pipe-line project.

After these transactions are completed, the common stock of Michigan Consolidated, Milwaukee Gas Light, and Madison Gas & Electric would be distributed pro rata to holders of American Light's common stock.

SEC Permits Stock Sale

THE Securities and Exchange Commission on October 30th approved the proposal of the American Gas & Power Company to sell all of the common stock of the Bangor (Maine) Gas Company to Irwin E. and Sidney A. Kane, Providence, Rhode Island, for $122,500 plus net earnings available for common stock from August 31st to the date of sale.

The stock consists of 6,000 shares of $80 par value.

Proceeds are to be deposited with the trustee of American's debenture indenture as substitute collateral for the securities being sold.

The purchasers are partners in Benjamin N. Kane Investment Company, a family partnership.

SEC Approves Plan

THE Securities and Exchange Commission last month approved a plan filed by the Illinois Traction Company, a subsidiary of the North American Light & Power Company, in compliance with § 11(b) of the Public Utility Holding Company Act, which in substance provides for retirement of the publicly held preferred and common stocks of Illinois Traction and subsequent liquidation of the company.

Under the plan the holders of Illinois Traction preferred stock would receive $166 a share and the holders of its common stock $50 a share upon surrender of the stocks for cancellation. Illinois would then transfer to its parent all its remaining assets, including 1,496 shares of 7 per cent preferred stock, 10,000 shares of common stock of Kewanee Public

Service Company, 350 shares of common stock of Cahokia Manufacturers Gas Company, 300,000 shares of common stock of Illinois Power Company, and warrants for an additional 300,000 shares of the same stock and any remaining cash.

The commission stipulated that jurisdiction be reserved by it with respect to all fees and expenses incurred in connection with the plan and over the accounting entries to be made by North American Light & Power in connection with the liquidation of Illinois, including the right to review such entries at a subsequent date and any changes which may be necessary or appropriate.

Convention Ban Continued

THE Office of Defense Transportation on October 27th said that it would continue its convention curtailment program through the first quarter of 1945.

E. J. Connors, assistant ODT director, appealed to executives of convention-holding organizations to cancel all meetings scheduled before April 1, 1945, because of the continued strain on the nation's transportation systems. Hotels also were asked to coöperate by discouraging unnecessary conventions.

RFC Sells Utility's Note

JESSE JONES, chairman of the Reconstruction Finance Corporation, announced last month that the corporation had sold the note evidencing its loan to Ohio River Power, Inc., Cleveland, a wholly owned subsidiary of the Ohio Public Service Company, to the Chase National Bank, New York, at 106 and interest.

The balance due on the note is $7,442,110, and the price received represents a premium of $446,526 and a yield of about 3 per cent to final maturity, now twelve and one-half years.

The loan was authorized early in 1942 in the amount of $8,000,000 to finance the construction and acquisition of a power plant in Belmont county, Ohio.

GE Cancels Conferences

AFTER holding only one meeting, General Electric Company suddenly canceled a series of conferences with public utility executives on postwar planning.

The remaining sessions were called off, the company announced, when it received a telegram from Secretary of the Navy Forrestal and Under Secretary of War Patterson stating "the meetings might be misunderstood." The telegram received at the GE New York headquarters said:

"The General Electric Company has a splendid record for war production on an all-out basis. We know that you intend to keep the needs of the armed forces first and foremost as long as those needs continue. We are receiving urgent appeals for war supplies on an increased scale from the commanders of the fighting forces overseas. These demands make it plain that production of war materials must be increased rather than reduced. In view of these facts, it seems to us that any meeting of your executives at this time to consider postwar planning might be misunderstood and taken to mean that the needs of production are declining."

The first GE-utility executive conference was held October 26th and 27th in Atlanta. The second was to have been held in New York early in November, followed by a third in Chicago.

General Electric plans to reschedule the meetings as soon as Army and Navy appraisal of the war situation will permit.

Liquidation Plan Approved

THE Securities and Exchange Commission last month approved a liquidation plan representing a compromise of litigated claims for the bankrupt estates of Commonwealth Light & Power Company and its subsidiary, Inland Power & Light Corporation.

All creditors are being paid off under the plan, which leads to the dissolution of both companies. Inland and Commonwealth have been in bankruptcy for nearly twelve years.

Public holders of Inland bonds will be paid an initial distribution of $66.75 for each $100 principal amount and 74 per cent of any remaining funds upon liquidation.

Public holders of Inland debentures and Commonwealth bonds will be paid $30 for each $100 principal amount.

Middle West Corporation will be paid in full satisfaction of all claims against the two companies with $260,786 cash, 59,278 shares of Arkansas-Missouri Power Corporation's common stock (now held by Inland), 2,400 shares of Missouri-Edison Company's common stock, and a 26 per cent share of any remaining funds.

The following creditors will be paid 30 per cent on their claims—the Kansas Power Company on a $60,000 claim, the commonwealth of Virginia on a $10,942 claim, and the state of Maryland on a $1,150 claim.

FPC Receives Application

THE Federal Power Commission on November 1st announced its receipt of a joint application filed under § 203 of the Federal Power Act by the California Public Service Company for authority to sell and the California Oregon Power Company to buy, the properties of California Public Service located in Lake county, Oregon, and Modoc county, California, or, in the alternative, an order of the commission dismissing such application on the ground that FPC has no jurisdiction over the sale.

Arkansas

AP&L and Co-ops Reach Agreement

THE Arkansas Power & Light Company amended the service clauses of its electric rates to rural coöperatives on October 26th in an effort to settle its rate schedule dispute with 15 protesting Arkansas coöperatives.

The decision was announced by C. Hamilton Moses, AP&L president, as the state utilities commission completed hearings on the company's proposed new rate schedule.

The state commission on October 31st announced its approval of the new schedule, stipulating that the Eighth Service Command should have a reduction in electric rates for Army installations. This will effect a reduction of approximately $1,100,000 to Arkansas electric consumers.

The reduction is approximately $25,000 greater than the amount originally proposed by the utility following a June 24th order of the commission to reduce rates. The company was ordered to start billing at the new rates November 26th, beginning of a new billing cycle. Excess rates collected between June 30th and November 26th will be placed in an excess net electric revenue deferred credit fund, the commission said.

Six rural electric coöperatives and the Eighth Service Command of the Army had intervened in the rate hearings. The co-ops, which buy power from the AP&L, will save about $26,000 a year and War Department installations, originally excluded from the reduction, will save at the rate of $48,000 annually.

Coöperatives redistribute power to rural homes and to farms under the amended service clauses. "We are going to work together to build up rural areas in Arkansas," Mr. Moses said. He said AP&L had feared the co-ops were trying to infringe on its industrial business, but after two days of conferences "we are satisfied that the primary purpose of the co-ops is to serve rural areas."

Under the concessions, coöperatives of the state "will be able to buy power from a private company cheaper than any other co-ops in the United States," Mr. Moses said.

The changes will permit the co-ops to:

1. Secure a rate of 6 mills per kilowatt hour at a 35 per cent load factor.

2. Serve any load not exceeding 100 kilowatts which is on or adjoining their present lines.

3. Take on loads anywhere in their territory not exceeding 40 kilowatts.

4. Serve rice mills and cotton gins at this rate.

Frank Wills, lawyer for the 15 co-ops, testified that they had no objection to schedule as amended.

The state utilities commission on October 24th allocated territory for construction of 35 miles of rural electrical lines west and south of the Arkansas river in Jefferson county at an estimated cost of $28,000 to the Arkansas Power & Light Company, on condition that the company submit a complete survey on an amended application within sixty days. Approval was given after Willis Holmes, utility lawyer, disclosed that the AP&L had reached an agreement with the Cleveland and Lincoln Electric Coöperative on a division of the territory in that section.

AP&L and the Ashley-Chicot-Union Electric Coöperative, both with applications on file for allocation of territory in Chicot county, were ordered last month to complete their surveys within sixty days, when the state commission will consolidate the cases and set a hearing date.

Co-op Plan to Abandon Plant

INTENTION of the Petit Jean Rural Electric Coöperative to shut down its 175-kilowatt generating plant at Clinton and to buy all its power from the Arkansas Power & Light Company because it would be cheaper was revealed in testimony of E. D. Chapin, co-op manager of Clinton, before the state utilities commission last month.

The commission heard applications of the AP&L on amended applications for extending its rural electric distribution lines in Faulkner and Conway counties. At the conclusion the commission took the matter of allocation of territory under advisement with the statement its decision would be announced in "a very few days."

Manager Chapin said power now costs the co-op 2½ cents a kilowatt hour but under the new rate offered by AP&L it can buy power for 6 mills. He said the Clinton plant is obsolete and the system poorly constructed. It had been planned to spend $50,000 to rebuild it, he said. The co-op paid $80,000 for the plant and system.

Under cross-examination by William Cobb, acting chief engineer for the utility, Mr. Chapin said the co-op plans to spend $370,000 in building rural extensions to its lines in Faulkner, Conway, Van Buren, Cleburne, and Pope counties.

Water Firm Held Taxable

THE water company owned by Improvement District No. 1 of Gurdon is assessable for taxation, Tax Director E. W. Brown of the Arkansas Corporation Commission was informed by Attorney General Guy E. Williams recently.

The city's water system was leased to the Arkansas Power & Light Company, which in turn assigned it to the Gurdon Water Company which now operates the utility, paying to the district 20 per cent of the gross receipts

as rent. Mr. Brown asked the attorney general whether the property would be exempt from *ad valorem* taxation under the circumstances.

Holding that the water company, since it is not being used exclusively for public benefit, is taxable, the attorney general quoted from an Arkansas Supreme Court decision in the case of School District of Fort Smith *v.* Howe: All public property is not exempt. All property belonging to the public must be used for the benefit of the public, but our Constitution distinguishes and sets apart as exempt from taxation only that public property which is itself used exclusively for public purposes."

Since the improvement district is owner of the company the assessment should be made in the district's name, the opinion said.

California

GOP Commission Control

THE recent election to Congress of Franck R. Havenner as a Representative from the fourth congressional district of California (San Francisco) will leave a vacancy on the California Railroad Commission, of which Havenner is a Democratic member. The expected appointment of a Republican member to the commission by Governor Earl Warren would give the GOP controlling membership of that board for the first time in a number of years. Havenner's election remained somewhat in doubt pending final count.

Indiana

Fort Wayne Election

BY approximately 4 to 1, the city of Fort Wayne defeated a city commission proposal to buy out the large electric properties of the Indiana Public Service Company. These properties now operate in competition with the Fort Wayne municipal plant.

Iowa

Voters to Decide on Lease

LEASING of the Webster City gas mains to the Peoples Natural Gas Company, of Omaha, will be voted on at a special election to be held soon following completion of negotiations between the city council and officials of the gas company.

Members of the council have been negotiating with the company for six months and were said to now have a proposition ready to submit to the voters.

Under the proposed agreement, the company will lease the present gas mains, part of the municipal system, and will pay the city $5,000 in rent annually for fifteen years. At the end of the period the city has the option of taking back the property at the costs of improvements and additions made by the company less a slight amount for depreciation. The company also would be given a 25-year franchise to be automatically canceled in the event the city resumes ownership of the property.

Webster City has operated a municipal plant, furnishing manufactured gas since 1912.

The natural gas company would lease only the present mains, but would not lease the municipal plant.

Kansas

Seeks SEC Approval

THE Kansas Power & Light Company recently asked the Securities and Exchange Commission to approve the sale by it of all its water plant property and distribution system in the city of Hutchinson, Kansas, to Amos Small, of Wichita, Kansas, for $940,000. The company stated retention of the water system in Hutchinson is not necessary to its electric and gas business.

The company reported the bid of Mr. Small was the highest of numerous bids received.

Funds from the sale are to be paid to trustee under indenture securing company's first mortgage bonds, 3¼ per cent series, due July 1, 1969. The company is part of the North American holding company system.

Kentucky

Declines to Probe Service

A DEPLETED field staff was cited by J. J. Greenleaf, chairman of the state public service commission, in declining to investigate rates, safety of mains, and heat value of gas furnished by the Owensboro Gas Company in Bowling Green, it was shown on November 1st in his reply to a petition from officials and citizens of Bowling Green.

They requested an investigation of rates, in view of the possibility the Owensboro Gas Company "may be sold at an exorbitant price and there may be an effort made to increase the rates."

The petitioners cited "several small gas explosions" and "one large gas explosion" in Bowling Green in asking for an investigation of safety of the mains and pipes. In asking for an investigation of the heat value of the gas, the petitioners complained that heating quality is less than it was two years ago.

"The commission," Greenleaf wrote Mayor Cole, "feels that this would be a very large order and that perhaps some parts of the request would be beyond its usual service even in normal times when the commission had a large field staff; and now with its field staff depleted the commission finds it impossible to comply with your request at this time."

As to the rates, Greenleaf informed Mayor Cole that if the utility were to be sold "the city of Bowling Green will have full opportunity to be heard as to the fair value of the property, reasonableness of rates, and all other related subjects."

The Owensboro Gas Company serves Bowling Green, Russelville, Hopkinsville, and Owensboro.

Asks to Extend Line

THE Kentucky Edison Electric Company, Stanton, on October 31st based a plea for authority to extend its lines from Frenchburg to Salt Lick on the ground it could thus gain possible connections with Kentucky Utilities' lines for emergencies.

Harry Peet, president and general manager of Kentucky Edison, told the state public service commission his company depended upon electric power from a lone gas-powered generator which might have to be abandoned.

He added that his company hoped to serve a possible seventy customers not now receiving electric service along the proposed 4-mile line.

The Fleming-Mason Rural Electric Coöperative intervened, pleading that it already had started construction of a substation connection with KU at Olympia Springs which could be made available to Kentucky Edison for temporary emergencies. KU did not enter a formal protest but pointed out that part of the line was contemplated in an application already pending before the state public service commission.

Commission Chairman J. J. Greenleaf accepted the testimony with the reservation that involved companies might be called back to "unravel" what he termed a "tangled" 3-way bid for the permit.

Maryland

OPA Seeks to Intervene

THE Office of Price Administration last month sought permission to intervene in the hearings regarding the rates of the Consolidated Gas, Electric Light & Power Company of Baltimore, which some time ago announced its intention of raising gas rates if a reduction in electric rates is ordered.

The request of the OPA was contained in a petition to the state public service commission from Chester Bowles, OPA Administrator, who said he was also speaking on behalf of Fred M. Vinson, Director of Economic Stabilization.

"The question of under what circumstances rates or charges for gas service should be increased during the period of national emergency resulting from the war is one of basic national importance in which the Director of Economic Stabilization and the Price Administrator have a substantial interest," the petition read.

The petition cited various authorities for the intervention of the OPA in the hearings and declared that "any such increase in rates or charges would necessarily increase the cost of living of those affected consumers."

The utility company, the petition continued, has "consented" to the intervention of the OPA and Mr. Vinson's office in the hearings.

WLB Rules in Transit Case

THE War Labor Board last month directed the Baltimore Transit Company to continue its present method of settling grievances with its union employees. It denied the company's request for the elimination of the second step in its grievance procedure, which provides for a conference between the company and representatives of the union before the grievance goes to arbitration.

The vote of the board was 6 to 3, the industry members dissenting.

The board was of the opinion, it was stated,

that to remove the second step at the company's option would destroy much of the potential collective bargaining on grievances. In the absence of this step of the procedure, it was said, arbitration would occur after the initial consideration of the grievance and before any management representatives and union spokesmen had had an opportunity to effect a settlement.

The company sought modification of a directive of the board issued in November, 1942, which established grievance machinery, with arbitration as the final step, for members of the Amalgamated Association of Street, Electric Railway, and Motor Coach Employees (AFL), the WLB statement asserted.

The union has not been certified as bargaining agent by the National Labor Relations Board, the WLB explained, although the NLRB has ordered the disestablishment of an independent union, nor has the company recognized the union.

Michigan

Gas Hearing Delayed

THE state public service commission's hearing requiring the Michigan Consolidated Gas Company to show cause why rates should not be adjusted was in adjournment on October 31st until November 20th, to permit company attorneys to study claims of the city of Detroit that a $1,325,000 rebate to consumers can be made this year and a $3,470,000 rate reduction effected in 1945 "without costing the company a cent."

Clifton G. Dyer, attorney for the gas company, asked Gilbert T. Shilson, chairman of the commission, for the adjournment at the end of the session October 23rd, declaring that "facts and figures have been presented requiring study."

Dyer was referring to testimony of Richard A. Sullivan, Detroit rate analyst, under questioning by James H. Lee, assistant Detroit corporation counsel, it was reported.

He said the company could make the $1,325,000 rebate this year instead of paying $1,133,000 in Federal excess profits taxes, and through a commission order disallowing an item of $192,000 for postwar reserve from operating expense.

Contending the reserve item could not properly be charged to operating expense under commission rules, Sullivan insisted the rebate would not affect the company's rate of return on capital investment. He pointed out the rate rebate for this year and the reduction for next year would consume company income subject to Federal excess profits taxes, making unnecessary large payments of these taxes.

Lee and Sullivan recommended that the commission order the 1944 rebate made by directing that 541,000 residential gas users and 18,000 commercial customers receive a 75 per cent discount on their December bills and that a 20 per cent discount be made for 71,000 space gas users on their December bills.

The 1945 rate reduction was recommended for residential and commercial customers of the company only.

Dyer, outlining the position of the company, denied rates were excessive, asserted that the company's present investment return was inadequate, and challenged the commission's authority to order rate adjustments.

Missouri

Drive for Negro Transit Operators

ANNOUNCEMENT of a campaign to induce the St. Louis Public Service Company to employ Negroes as bus and streetcar operators was made recently before about 2,100 persons at a meeting of the St. Louis unit of the March on Washington movement. T. D. McNeal, director of the local unit, said the organization proposes to do "everything possible" to get Negro operators on busses and streetcars.

Amplifying this statement later to a newspaper reporter, David M. Grant, a member of the unit executive committee, said several complaints against the company had been filed with the President's Fair Employment Practices Committee and that if the committee did not act on them by spring, demonstrations would be begun in behalf of recognition of Negro rights.

A. Philip Randolph, president of the Brotherhood of Sleeping Car Porters and head of the March on Washington movement, told the meeting the movement's technique would be to follow the pattern set in India by Gandhi and Nehru of nonviolent, good-will direct action.

Officers of the Public Service Company declined to comment.

Electric Plans Disclosed

MISSOURI power companies operating with Rural Electrification Administration financial aid are planning a $46,500,000 postwar expansion program designed to bring electricity to 114,000 new rural consumers within three years after materials and man

power become available, the REA announced last month.

Plans call for $30,000,000 to be used to build distribution lines and $16,500,000 to finance generation and transmission facilities, installation of plumbing and electrical equipment on farms and in rural homes, and for improvement of existing rural electric systems in the state.

The REA said that one-fourth of the farms in Missouri, about 65,000, have electricity, and more than one-half are on REA-financed lines which extend into 109 of the state's 114 counties.

Nebraska

FPC Approves Proposals

THE Federal Power Commission on November 2nd announced its order approving proposals by the Nebraska Power Company, Omaha, to eliminate from its electric plant accounts amounts totaling $8,861,569.65 in write-ups and other excesses over original cost. The dispositions are to be effected (1) by immediate charges to surplus and other specified accounts of amounts totaling $5,950,071.60 (representing write-ups and other improper charges and credits), and (2) by the amortization over a period of ten years of $2,911,498.05 (representing electric plant acquisition adjustments).

The original cost of the Nebraska Power Company's electric plant as of January 1, 1938, was $27,777,265.45. Thus the elimination of $8,861,569.65 represents about 32 per cent in excess of the original cost of the company's electric plant.

The commission's order directed the Nebraska Power Company to complete within three months a study on which it is engaged to determine the gross amount of construction fees (previously stated not to exceed $900,000) paid to Phoenix Utility Company and other companies associated with Nebraska Power Company. The company is to determine the amount of such fees originally capitalized, the unretired balance remaining in plant accounts, and the amount of profit to the recipients. The order further directed the company to submit within three months its proposed plans for the classification and disposition of the profits involved in the fees which are still reflected in plant accounts.

Rate Reduction Requested

MAYOR Dan Butler and five city commissioners of Omaha said in a joint statement recently that legal proceedings would be instituted against the Nebraska Power Company in the city unless a rate reduction is granted the city. He declared the reduction may be as much as $1,000,000 annually.

The statement said the request was based on a valuation of $31,578,091 set on company properties by the Federal Power Commission, a figure which was said to be "substantially less than that upon which the present rates for electric current are based."

New Jersey

Vote Capital Rise

SUBJECT to approval of the state public utilities commission, stockholders of the Elizabethtown Consolidated Gas Company voted last month to increase the company's capital stock from 38,750 shares to 120,000 shares of $100 par value. The change will increase the company's capital from $3,875,000 to $12,000,000.

William S. Potter, vice president and treasurer, explained that the increase was authorized so that the "balance sheet would more fairly reflect the true permanent capital of the company."

Further action on the increase will be taken by the stockholders after the state commission acts. The method of sale of the new stock and the use of the money were reported undetermined.

Ohio

Transit Unions Denied Pay Boost

TRANSIT workers in four major Ohio cities on October 27th were denied requested wage increases by the regional War Labor Board, resulting in expressions of disappointment from union officials.

The WLB's far-reaching decisions involved personnel of transit systems in Akron, Columbus, Dayton, and Toledo. Six separate cases were before the board. The companies and unions, and number of employees, were:

Akron—the Akron Transportation Company and two unions, the CIO Transport Workers Union (615 workers) and the AFL International Association of Machinists (113).

Columbus—Columbus & Southern Ohio Electric Company and the CIO Transport Workers Union (600).

Dayton—the City Railway Company and the AFL Amalgamated Association of Street, Electric Railway, and Motor Coach Employees (204); the Peoples Transit Company of Dayton and the same union (204).

Toledo — Community Traction Company and the Maumee Valley Transportation Company and the AFL Amalgamated Association of Street, Electric Railway, and Motor Coach Employees (560).

The WLB announced it recommended simultaneously that the companies and operators agree on a bonus formula designed "to compensate operating workers in the local transit industry for increased and unusual work load during the war period; the bonuses are measured by the increase in revenue per vehicle mile since 1941."

The WLB announcement said the regional board set a pattern for overtime payments for bus and streetcar operators "when it awarded time and one-half pay for work performed after eight and one-half hours in a day, but denied all requests for weekly overtime pay to the operators."

Jeff Winkle, president of the Dayton AFL affiliate, commented:

"Employees are worse off than they have been under the present contract. We are worse off than a common laborer . . ."

Oklahoma

Improvements Planned

THE Oklahoma Natural Gas Company is launching a new construction and improvement program for next year involving the expenditure of over $1,500,000, it was announced recently by Joseph Bowes, president.

The projects are being undertaken not only to meet present requirements, but also in anticipation of Oklahoma's growth and development in the postwar era, Bowes said. It provides $354,000 for drilling and equipping new gas wells and the installation of additional equipment for existing wells.

South Carolina

Election Date Changed

THE date for the referendum on whether or not the city of Columbia will purchase the properties of the South Carolina Electric & Gas Company was officially changed to December 12th on October 25th by a vote of the city council.

Councilman Fred L. Mays and City Engineer W. S. Tomlinson were appointed to discuss the fee to be paid the engineering firm of Wingfield & Henkel, Inc., of Washington, D. C., for studying the properties of the utility company and ascertaining a just price for the sale. The mayor requested a report from the engineers on the utility by November 30th.

Virginia

Transit Systems to Be Sold

DIRECTORS of the Virginia Electric & Power Company on October 27th voted to put the company's transportation properties in Richmond and Norfolk up for sale to the highest bidder.

Embracing streetcar and bus systems, the properties have a book value of about $15,400,000. They were ordered sold two years ago by the Securities and Exchange Commission under the integration provisions of the Public Utility Holding Company Act.

Bids would be received after November 1st until December 1st at the company's office in Richmond. Separate bids are requested.

The transportation operations of the company date back to its formation in 1909.

Washington

Referendum Defeated

POWER Referendum No. 25 was defeated at the general election on November 7th, according to incomplete returns. The referendum would have enabled public power districts to act jointly in the acquisition of power facilities.

The returns showed 225,906 for the referendum and 288,197 against.

The Latest Utility Rulings

Rates Based on Prudent Investment Upheld by Utah Court

An order of the Utah commission, in 50 PUR(NS) 133, reducing rates of the Utah Power & Light Company was upheld by the supreme court of Utah, although the commission had used prudent investment as a rate base and rejected evidence of reproduction cost. The court also upheld the action of the commission in excluding from prudent investment fees paid to an affiliated construction company and amounts paid to a parent company for organization services. Approval was also given to the exclusion of amounts paid to an affiliate for compensation for selling preferred stock to the parent company.

Exclusion of "system cost," representing intangibles such as good will and going concern value of properties leased, was sustained. The action of the commission in using 1941 as a pattern year to estimate annual operating expenses and the number of kilowatt hours the company would sell was held not to be arbitrary. Nor was the commission allowance of 6 per cent for return considered arbitrary.

Disallowance of any amount for excess profits taxes, on the ground that under reasonable rates and earnings the company would not be subject to such a tax, was held to be supported by the evidence. Similarly the court sustained the commission's ruling that no allowance need be made for surtax because after credits for preferred stock dividends the company would be exempted from payment of a surtax.

The commission's action in basing its computation of the amount to be allowed for accrued depreciation and the annual depreciation expense on the cost of property was sustained in view of the holding of the United States Supreme Court in the Hope Natural Gas Case.

Dealing with the question of a prudent investment rate base, the court held that under recent Supreme Court decisions there is no constitutional requirement that utilities be permitted to earn a fair return on fair value. The only constitutional requirement is that rates shall not be confiscatory and that the requirements of procedural due process be followed. Moreover, the court held, the Utah legislature had not directed the commission to use value as the rate base. The commission is given general jurisdiction over rates and is required to fix rates that are "just and reasonable."

A contention that the commission had consistently construed the statutes as requiring it to use fair value as the rate base was rejected, as the commission had indicated that adherence to the fair value rule was required by court decisions applying constitutional law.

The court also overruled a contention that when the Utah act was passed constitutional substantive law required adherence to the fair value principle and the act incorporated such principle. The early concept that a rate could not be just and reasonable in the constitutional sense unless it permitted a fair return on fair value, said the court, had been overruled, and it would be contrary to common sense to hold the legislature meant "just and reasonable" only as defined by the court at the time of Smyth *v.* Ames and to hold that the legislature would, in order to authorize the commission to use prudent investment, be required to reënact the statute, saying that it meant "just and reasonable" as that term is construed today. To the con-

trary, said the court, it must be assumed that the legislature contemplated that the concept of that which is just and reasonable might change with social trends. *Utah Power & Light Co. v. Public Service Commission of Utah et al.*

Comparison Fails to Show Rates Excessive Or Discriminatory

THE supreme court of Illinois upheld an order dismissing a complaint alleging that by comparison rates were shown to be excessive and discriminatory. A lower court had set aside the commission order, but the judgment of that court was reversed.

Various rate schedules for industrial power contained qualifying characteristics distinguishing them and determining availability to various customers. Some of these features were adaptability of the customer's facilities to the current furnished, amount of current, minimum payments, discount features, and territorial restrictions. The complaining customer received service under a standard industrial rate, available to customers who could meet the requirements of the rates, without territorial restrictions.

A company rate engineer testified that rates for industrial uses are ordinarily based on two principal factors, one covering demand costs and the other energy costs. Other factors may be common to the whole territory served and to every rate schedule. Some rates are designed on factors peculiar to certain localities. One of such factors is the element of competition. This element was taken into consideration in designing schedules available in an area located near a field served by another company which had a low rate.

The commission had found that although certain rate schedules were not available to the customer, this would not of itself constitute an unjust discrimination, nor would the comparison of rates prove that the customer was paying an excessive rate. The evidence did not show that conditions affecting the cost of producing and delivering energy in the two areas were the same.

The court held that the competition factor does not in itself prove that a customer was charged an excessive rate, although a basis for the claim of excessiveness would have been established if it had been shown that the loss in reduced earnings from competitive fields led to higher rates in noncompetitive areas. The evidence, the court continued, did not disclose comparable conditions in the two areas as to investment, equipment, service facilities, load conditions, customer saturation, and other relevant factors.

The insufficiency of the evidence to prove the claim of excessive charges, it was held, applied with equal force to the claim that there was unjust discrimination. The court continued:

> An unjust discrimination is not proved by the mere comparison of the rate fixed by one schedule with the rate fixed by another. To afford a sufficient basis for comparison there must be evidence to show the difference in the conditions under which the rates were put in force.

Wedron Silica Co. et al. v. Illinois Commerce Commission et al.

Competing Water Service Not Permitted

AUTHORITY to install a competing water plant and for a restriction of the existing plant service was denied by the Arizona commission, where the applicant's distribution system was obsolete, where the proposed service would be unprofitable, and where the existing water company was prepared and willing

to serve the entire area adequately.

The petitioner's claims were based partially upon the plea that her father had acquired so-called "grandfather rights" to which she had succeeded. Such rights would inhere, said the commission, if the evidence disclosed conclusively the commencement of operations of the water utility prior to the time that Arizona became a state, February 14, 1912. There was, however, no evidence of record that there had been a distribution and sale of water by the petitioner's father at any date earlier than the year 1919.

The commission said that while the law does not prohibit two or more public service operations in the same community, there have been only two such cases since statehood, and both of them have resulted disastrously both to the operators and to the consumers. This is true because the duplicate investments by the competing companies result in excessive overhead and higher rates. *Re Wade (Docket No. 9442-E-965, Decision No. 15052).*

Extension into Neighboring Township Not Required

THE Pennsylvania commission dismissed a complaint seeking to require a water company to extend service to inhabitants of a neighboring township on the ground that the commission is without power to require such an extension.

The company had based its refusal to furnish service on the fact that it had no charter right or obligation to supply the public in the other township.

It admitted that it was furnishing service to some consumers in the township, but in so doing relied on a clause in the charter of one of its component companies, which by merger proceedings, became part of the present company. It believed, however, that the right thus given it was not sufficient to enable it to extend its operations. *Polando et al. v. Trotter Water Co. (Complaint Docket No. 13918).*

Extension by Electric Company Authorized Over Objection by Coöperative

THE Illinois Power Company was authorized to make a rural electric extension into an area surrounded by existing lines, although the Farmers Mutual Electric Company, a coöperative, raised objections because it was in the process of constructing lines in the same territory and to serve substantially the same prospective customers. No motion had been made in this case to bar the coöperative from participation, and the commission decided the issue without regard to the question of the standing of the coöperative before the commission, although it was said that the commission might logically raise the point on its own motion.

The coöperative had proposed a one-wire extension, and there were indications that it might be favored in the allocation of materials by the War Production Board. But the commission pointed out that the company proposing the use of more than one wire could itself construct a one-wire system if that were desirable. The commission concluded that the company could construct an extension more economically, both as to cost and to use of materials. Approximately nine miles of line would be required by the company as against approximately eleven miles by the coöperative.

It was said to be beyond question that

the powers and duties of the War Production Board relate solely to the present national emergency and the conditions that have arisen thereunder. In particular, the power to allocate and restrict the use of materials regarded as critical, but not normally so regarded, is a wartime power and nothing more. This power is not one which, by indirection, said the commission, should control the determination of local questions not essentially related to that purpose, since it clearly was not the intent of the Federal government or Congress to supersede unnecessarily the powers of properly constituted state authorities with respect to local and intrastate matters.

Two rival organizations each proposed to furnish service in a local area. This service was not intended to be only temporary. The issue resolved itself to a determination of which of the rival organizations should be permitted to occupy and serve indefinitely a territory in Illinois. This was not a question of war emergency but a local territorial dispute and a matter properly to be determined by the lawful state authority. *Re Illinois Power Co. (32316).*

Value of Service Is Limitation on Street Railway Rates

An application for authority to increase street railway rates was denied by the California commission on the grounds that the applicant's existing service did not justify higher rates and that existing rates were producing a return of 5 per cent. The operating results of the company were held to be a conclusive refutation of the argument that the sole remedy for unsatisfactory revenues and profits is higher rates.

The first question considered by the commission was whether it should require from the ratepayers a continuing payment for depreciation expense as a part of the applicant's operating costs and distinguished from net earnings and rate of return, when the company had been fully reimbursed for its total investment in its depreciable property and in addition had received net profits at a fair rate of return, or higher. It was held that a public utility company is not entitled to a depreciation allowance on its fully depreciated property.

In determining the rate base and the rate of return, the commission stated that it was not required to use a specific formula.

The earning value of the company's property was not deemed a proper measure of the rate base.

The applicant took issue with the commission's conclusion that the value of the service to the car riders must have consideration in fixing the rate, but the commission said:

> The argument that the value of a utility service should have no bearing on the price paid for such service is contradicted not only in the Public Utilities Act and the decisions of the courts, but also by the everyday realities of rate making and rate paying. A longer ride is worth more than a shorter ride and usually costs more, and rates are made on that basis. This principle is not lost sight of even when rates are blanketed throughout a uniform rate area. The ratepayer in the same category of service must pay more for a larger quantity of electricity or gas than for a smaller, and this commission has fixed different rates for gas of a lower as compared with a higher heating value. The point need not be labored.
>
> When in this case we speak of value of the service, we mean the extent, character, and quality of the transportation furnished by applicant's cable railroad as compared with the transportation service furnished by other comparable agencies in San Francisco and elsewhere.

Cost of operation alone, including the abnormal and excessive cost of operation of an obsolete cable railroad, the commission concluded, is not controlling in determining the reasonableness of rates. *Re California Street Cable Railroad Co. (Decision No. 37167, Application No. 24486).*

Station in City Can Be Abandoned without Commission Authority

A COMPLAINT on behalf of the Order of Railroad Telegraphers, alleging that a railroad had abandoned a freight station without authority from the commission, was dismissed by the Wisconsin commission on the ground that the station was within the city of Racine and commission authority is required only when stations in towns and villages are abandoned.

The public service commission observed, however, that this did not mean that the commission could not require restoration of any such station upon a showing that it was necessary to enable the railroad to furnish adequate service to the public.

The statute requiring commission authorization makes it unlawful to abandon any station "in any town or village" without such authorization. It was contended by the complainant that the statute must be held to include cities within its meaning. Another statute provides that the word "town" may be construed to include all cities, villages, wards, or districts unless such construction would be repugnant to the provisions of any act specially relating to the same. This statute does not say that the word "town" must always be construed as inclusive of cities.

The commission did not think that the word "town" as used in the statute under consideration should be so construed, because such conclusion would result in giving to the section an intention and meaning repugnant to the language of the section itself. If the legislature had intended to use the word "town" in the broader sense, it would hardly have used the word "village" in connection with the word "town."

The purpose of the statute, said the commission, was to prevent the removal of stations in the smaller communities without authority. It was not deemed necessary to make any such provision with respect to removal of stations in cities because of the unlikelihood that any railroad would wholly remove such facilities from any community large enough to be incorporated as a city.

Moreover, the statute was held not to be open to construction because its language as it read was clear and unmistakable. *Boyington v. Chicago & North Western Railroad Co. (2-R-1616).*

FPC Authorizes Louisville Pipe-line Link

THE Federal Power Commission recently authorized the Louisville Gas & Electric Company, Louisville, Kentucky, to construct and operate additional facilities, including a 65-mile pipe line to connect with the Tennessee Gas & Transmission Company's Texas-to-West Virginia pipe line, which has just been completed. The natural gas to be transported by the proposed facilities is a supplemental supply for the company's existing system, and the operation of these facilities is required to assure maintenance of adequate natural gas service to consumers presently served by the Louisville Company. The company has arranged to obtain 10,000 MCF of natural gas daily from the Tennessee Gas & Transmission Company's pipe line for service in the city of Louisville and environs.

The facilities, which are to be completed not later than January 31, 1945, include: (1) 62 miles of 8-inch and 3 miles of 12-inch pipe line extending from the Louisville city limits to a point of interconnection with the Tennessee Gas & Transmission pipe line near Calvary, Kentucky; (2) a cross-section of 6-inch line (for emergency use only) where the Louisville and Tennessee companies' lines cross in Menifee county, Kentucky. *Re Louisville Gas & Electric Co. (Docket No. G-565).*

Other Important Rulings

THE Pennsylvania commission, in canceling proposed ratings on certain kinds of freight, ruled that proper changes in ratings for motor carrier freight should be established in the classification rather than in the exceptions thereto. *Public Utility Commission v. Adams Transit Co. et al. (Complaint Docket No. 13977).*

The Washington Department of Public Service held that a motor carrier should not be precluded from transferring his operating rights because of nonusage where he had been engaged in the hauling of general freight to December, 1942, at which time he was required to cease regular operation because of causes beyond his control, where war conditions resulted in evacuation of Japanese from a farming area, where he (being experienced in the operation of farms) was instructed by his draft board to operate them, where because of his farming activities he could not continue regular service required under his permit, and where he did attempt to operate under the permit and maintained it in full force and effect. *Re Downey (Order MV No. 41298, Hearing No. 3260).*

The Washington Department of Public Service dismissed an application for transfer of rights under a common carrier permit where the transferor had not regularly or continuously exercised any of his rights and there was an insufficient showing that the nonexercise of such rights was due to conditions beyond the transferor's control. While it might be urged that the department should disregard procedural requirements and limitations governing transfer of unused rights and extend the rights of the transferee, the department was of the opinion that this should be considered on an appropriate application for extension of permit rights. *Re Weythman et al. (Order MV No. 41551, Hearing No. 3231).*

A gas customer showing a similarity between itself and other customers, admittedly favored by the gas company with lower rates, may recover from the company the difference between the rates paid and the rates charged the favored customers, together with interest to the date of trial, according to a ruling of the court of civil appeals of Texas. *United Gas Corp. v. Shepherd Laundries Co. Inc. 181 SW(2d) 929.*

The Pennsylvania commission, in fixing steam-heating rates in view of war conditions, held that a maximum return of 6¾ per cent was reasonable, that recent increases in wartime labor rates and material prices precluded the use of prewar operating experience, allowed one per cent of gross sales for bad debts, and required a coal clause to be put in the company's tariff. *Public Utility Commission v. Aronimink Park Heating Co. (Complaint Docket No. 13913).*

The supreme court of Nebraska held that under the Motor Carrier Act wilfulness in violating statutory provisions or administrative regulations is an essential fact to be determined by the commission before it can revoke a certificate, and when a finding of wilfulness is not made an order of revocation must be vacated. *Hergott et al.v. Nebraska State Railway Commission, 15 NW(2d) 418.*

The New York Court of Appeals held that a railroad aggrieved by rates established by the Interstate Commerce Commission must find its remedy, if any, in proceedings before that commission and not by an action to recover freight charges from a shipper. *New York Central Railroad Co. v. Beacon Milling Co. Inc. 56 NE(2d) 558.*

NOTE.—The cases above referred to, where decided by courts or regulatory commissions, will be published in full or abstracted in *Public Utilities Reports.*

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VOLUME 55 PUR(NS) NUMBER 4

Points of Special Interest

Titles and Index

TITLES

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WISCONSIN PUBLIC SERVICE COMMISSION

Re Wisconsin Public Service Corporation

2-U-1979

Re Menominee & Marinette Light & Traction Company

2-U-1980
September 13, 1944

APPLICATION *for authority to revise electric rates for commercial lighting and power, rural commercial, and industrial power service and commercial gas rates; granted with modifications*

Rates, § 323 — Electric —Connected load.

1. The connected load electric rate schedule is of an obsolete type which is discriminatory in character, p. 194.

Rates, § 347 — Power schedules — Combined lighting and power — Fixed charge.

2. Approval was granted for the adoption of standard power rate schedules identical in level with commercial lighting schedules, being a fixed charge type of rate and permitting combination of any amounts of lighting and power under the new schedules at the voltages and subject to the voltage regulation applicable to power service, p. 195.

Rates, § 347 — Combination of electric lighting and power — Wiring changes — Condition imposed because of war — Refund.

3. Authority to adopt new standard power schedules under which customers may secure advantages of service through a single meter for both lighting and power service should, during a time of shortage of materials and man-power caused by war, be conditioned upon application of the new rate to each separate point of metering, with the proviso that if the customer combines his services and changes to single metering within one year the company will refund the difference between actual billing and what the billing would have been had the customer been billed through a single meter, customers failing to make the change within one year to receive no refund but to be billed as single meter customers following change in wiring, p. 195.

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meeting competitive conditions should be approved when representing a significant forward step in a program looking toward the modernization, simplification, and reduction of rates, eliminating obsolete and discriminatory schedules, p. 197.

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Rates, § 384 — Gas — Modernized schedules — Commercial and industrial service.

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By the COMMISSION: Under date of July 24, 1944, Wisconsin Public Service Corporation and its wholly owned subsidiary, Menominee and Marinette Light and Traction Company, filed an application with the Commission covering a broad revision and simplification of electric commercial and power rates and a relatively minor revision of gas rates. Although the adoption of the proposed rates would result in annual savings to customers of about $220,000, some of the proposed changes will result in increases to a limited number of customers. The application was, therefore, docketed for formal hearing and notice of investigation was issued July 31, 1944.

APPEARANCES: Wisconsin Public Service Corporation, by Harry I. Miller, Rate Engineer, Oshkosh; city of Sheboygan, by Arnold Korman, Alderman, and J. W. Wilkus, City Attorney; of the Commission staff H. T. Ferguson, Staff Attorney, and H. J. O'Leary, Chief, rates and research department.

The company proposes to substitute for its present schedules for commercial lighting service new schedules which are lower in level, will permit an unlimited amount of power confined to small motors which meet the requirements of the company's filed service rules, and which will reclassify communities in accordance with the classification applicable to residential service. In addition, the minimum charge of the rural commercial schedule will be reduced so as to bring it more nearly in line wth the schedule which is proposed to be applied to the smallest communities in the urban classification. The new rates are to be applied in lieu of the existing standard fixed charge rates.

[1] In addition, an existing optional connected load schedule, Cl-1, applicable at Wausau, Merrill, and Stevens Point, and schedule CgO-1, applicable at Marinette, are to be withdrawn. The connected load schedule is of an obsolete type which is discriminatory in character. The withdrawal of this schedule will result in

some increases. On the basis of recent consumer data, it appears that of the 121 customers receiving service under connected load schedule Cl-1, 91 will receive reductions totaling $859 per year, while 30 will receive increases totaling $67 per year. In the case of schedule CgO-1 applicable at Marinette, 26 customers will receive reductions amounting to $28 per year, while 23 will receive increases in the sum of $29 per year. The over-all program as it affects commercial lighting and small power service will result in a greater degree of simplification and standardization, will eliminate present obsolete and discriminatory schedules, and will yield overall savings to the customers amounting to about $117,000 annually. Further, some of these customers will receive additional benefits by combining light and power service through a single meter.

[2, 3] The changes proposed in the power schedules are more sweeping in character than the changes in commercial lighting service. The company proposed to adopt as standard power schedules, rates which are identical in level with the commercial lighting schedules. For the first time a fixed charge type of rate will be applicable to general power service. Customers may combine any amounts of lighting and power under the new schedules at the voltages and subject to the voltage regulation applicable to power service. Where the voltage or regulation available is not proper for lighting service, the customer is to be required to furnish the equipment necessary to utilize the service for lighting. It is estimated that by combining lighting and power services through a single meter, customers will be able to save about $60,000 per year.

In order to take advantage of receiving both lighting and power service through a single meter, it will be necessary for the customers to make certain changes in their wiring systems. In some cases the changes will be quite minor and inexpensive. In other cases substantial changes may be required at considerable expense to the customer. The company has indicated that it will inform each customer of the possible savings which would result from combination of service and single metering. It will then be up to the customer to decide whether the savings are sufficient to warrant whatever expenditure is required to receive combination service through a single meter.

The Commission recognizes that due to the shortage of materials and man-power caused by the war, some customers will be unable to make the necessary wiring changes immediately. In order that such customers may secure the advantages of service through a single meter, our order will provide that the company shall apply the new rates to each separate point of metering with the proviso that if the customer combines his services and changes to single metering within one year of the effective date of the order, the company will refund to such customer the difference between the actual billing and what the billing would have been had the customer been billed through a single meter. Customers who fail to make the change within one year of the effective date of the order will not receive any refunds but will be billed as a single meter customer following the change

in wiring. To prevent any undue hardship, the Commission will retain jurisdiction to change the maximum refund period provided it can be shown that materials or man-power were not available to make the change within the one-year period.

Customers receiving service under the existing general power rate schedules Cp-1 and Cp-3 will save approximately $40,000 per year. It is proposed that schedule Cp-3, applicable in the Valley Division, be withdrawn as well as schedules Cp-4, Cp-7, and Cp-11, applicable in the Rhinelander area. The withdrawal of schedules Cp-4, Cp-7, and Cp-11, will result in increases to certain customers. In the case of Cp-4, forty-three present customers would receive a total increase of $1,244 if billed separately for lighting and power service. However, by combining services, the increases are limited to $379 per year for twenty-six customers, while thirteen customers receive decreases of $217 and four customers remain unchanged. Under proposed schedule Cp-7, by combining services where applicable, ten customers will be increased $75 annually and one customer will be reduced $6.32, and another remain unchanged. The introducton of a fixed charge type of schedule will cause slight increases to a few customers under schedules Cp-1 and Cp-3.

[4] The most serious increases involved in the proposed rate revision program are found in connection with the withdrawal of schedule Cp-11 effective in Rhinelander. Four customers can be transferred to other schedules and secure a reduction. However, the remaining eight customers excluding the city waterworks and sewage disposal plant would receive substantial increases totaling $9,740. The present schedule Cp-11 contains the following rate:

Demand Charge:
First 10 kw. @ $3.00 net per kw. per month
Next 10 " @ 2.00 " " " " "
Excess " @ .83⅓ net per kw. per mo.
Energy Charge:
20% or less of the continuous use of the maximum demand at .6¢ net per kw. hr.
Excess use at .2¢ net per kw. hr.

It may be noted that the first energy block of the above rate is 6 mills per kilowatt hour while the last block is 2 mills per kilowatt hour. The company contends that the application of the above energy charges results in furnishing energy at less than cost. In support of this contention the company submitted Exhibt 1, which reflects a study of 1943 minimum system costs of power delivered to the high side of the distribution substations. The study shows a minimum demand and nonvariable cost of $2.65 per kilowatt, and an energy and variable cost of .144 cent per kilowatt hour. We have considered the company's study of power costs and are satisfied that the application of schedule Cp-11 results in furnishing energy to customers at less than full allocated cost. Furthermore, the application of this schedule has brought about a serious discrimination. Power customers in Rhinelander have been able to purchase energy at a cost considerably lower than the cost available to other power customers similarly situated in other communities served by the same company. The elimination of the losses incurred in rendering service under schedule Cp-11 makes additional revenue available for distribution of reductions among other power cus-

tomers of the company. In order to give the customers affected an opportunity to adjust their operating conditions, the company proposes that the withdrawal of schedule Cp-11 be deferred until the first billing date in 1945.

Other modifications proposed in the power rates include the merging of schedule Cp-17 with schedules Cp-10 and Cp-14. As a result of the combination of schedules, customers will save about $7,400 per year. A new schedule to be applied separately to the water pumping and sewage pumping loads at Rhinelander now served under schedule Cp-11 is included in the proposal and will result in savings of approximately $40 per year. In summary, power customers and combined light and power customers will receive a net reduction of about $93,000 per year under the new schedules.

The modifications proposed in gas rates will permit the elimination of the demand rates CgO-1 and CgO-2. Customers on these schedules will be transferred to the new and lower schedules Cg-1 and Cg-2 with annual savings of $6,512. The new schedule Cg-1, formerly limited to the Sheboygan area, will be made available in De Pere, Green Bay, and Oshkosh. New schedule Cg-2 will be made available in the remaining territory, thereby eliminating present schedules Cg-2, Cg-3 and Cg-4. Customers now served under schedules Cg-1, Cg-2, Cg-3, and Cg-4 will save $3,700 per year, and only minor increases totaling $122 per year will apply to minimum bill customers at Marinette. Schedule Cw-1, applicable to commercial gas water and space heating, is proposed to be modified by including De Pere, Green Bay, and Oshkosh with the Sheboygan area. This change which will result in the elimination of schedule Cw-2 will result in savings of $55 per year. Under the company's proposal gas customers will receive a net annual saving of about $10,150.

[5, 6] The proposed modifications and reductions, amounting in all to a net annual reduction of about $220,000 per year, represent a significant forward step in the program which was adopted by the company after consultation with the Commission looking toward the modernization, simplification, and reduction of its rate schedules. The changes proposed will eliminate obsolete and discriminatory schedules, will reduce the cost of service to commercial lighting and power customers and commercial gas customers, and will introduce rate schedules which are more promotional in character, and which are more adaptable in meeting competitive conditions. The company testified that it proposed to start billing on the new rates effective with the October billing all customers who will receive reductions. Billing to the relatively few customers who would be increased under the new schedules will be deferred until the date prescribed by the Commission's order. Since the Commission does not have power to prescribe rates retroactively, we shall permit, but cannot order, the company to adopt the proposed billing dates under the new rates.

Finding

The Commission finds:

1. That present rates of Wisconsin Public Service Corporation and Menominee and Marinette Light and Traction Company to the extent herein modified are unreasonable and discriminatory

2. That the rates as herein prescribed are reasonable.

ORDER

It is therefore *ordered:*

1. That Wisconsin Public Service Corporation and Menominee and Marinette Light and Traction Company be and are hereby authorized to cancel their electric schedules Cg-1, Cg-2, Cg-3, Cg-4, Cl-1, CgO-1, Fc-1, Cp-1, Cp-3, Cp-4, Cp-7, Cp-10, Cp-14, Cp-17; gas schedules Cg-1, Cg-2, Cg-3, Cg-4, CgO-1, CgO-2, Cw-1, and Cw-2, effective for service furnished on and after the first meter reading date following the date of this order.

2. That Wisconsin Public Service Corporation be and is hereby authorized to cancel electric power schedule Cp-11 applicable at Rhinelander effective with the first billing dates in January 1945.

3. That Wisconsin Public Service Corporation and Menominee and Marinette Light and Traction Company are directed and authorized to apply the schedules set forth in the appendix attached hereto said schedules to be effective for service rendered on and after the first meter reading date following the date of this order.

4. That as a condition of the approval of the new commercial lighting and power rates Wisconsin Public Service Corporation and Menominee and Marinette Light and Traction Company shall refund to any customer who changes his wiring within one year of the effective date of this order, so as to take both lighting and power service through a single meter, the difference between the actual billing and what the billing would have been had the energy been recorded and billed through a single meter from the effective date of this order or the commencement of service, whichever is later.

5. That jurisdiction be retained to permit a change in the maximum refund period upon proper showing that materials or man-power were not available within the one-year period to permit customers to make the changes necessary to receive service for lighting and power through a single meter.

APPENDIX

Electric Service

Schedule Fc-1—Rural Commercial Service.

Effective in—All rural territory served.

Availability—This schedule is available for for lighting, heating, and power to country stores, taverns, filling stations, camps, hotels, dance halls, resorts, and other commercial establishments.

Rate

For transformer capacity of 5 kva. or less:

First 40 kw. hr. or less per month for .. $3.60 net
Next 60 kw hr. or less per month at ... 4.5¢ " per kw. hr.
Next 400 kw. hr. or less per month at ... 3.7¢ " " " "
Next 1,000 kw. hr. or less per month at ... 3.0¢ " " " "
Excess kw. hr. or less per month at ..... 2.5¢ " " " "

For transformer capacity in excess of 5 kva., the initial block shall be:

Over 5.0 kva. and not over 7.5 kva., 60 kw. hr. for ..... $6.00 net
Over 7.5 kva. and not over 10.0 kva., 65 kw. hr. for ..... $7.00 net
All over 10 kva. at $.75 net per kva. including 7 kw. hr.—kva.

Where more than one customer is connected to the same transformer, the capacity used in determining the billing of each customer so connected shall be that size determined by the company which would be necessary in case each were to be served from a separate transformer.

Prompt Payment of Bills—The net bill shall be increased 5% of the first $25 and 1% of the excess, if payment is made after expiration of the prompt payment period of approximately ten days, as indicated on each bill.

Minimum Charge—The minimum monthly charge shall be the charge for the initial block of energy if the construction cost does not exceed $600 per customer. When the construction cost exceeds $600 per customer, the minimum monthly charge shall be increased 1% of the excess over $600 per customer.

The minimum annual charge shall be four minimum monthly charges:

Commercial Service

	Cg–1[1]	Cg–2[2]	Cg–3[3]	Cg–4[4]
Rate				
Fixed Charge—Net per month	$.75	$.75	$.75	$.75
Energy Charge				
1st 100 kw. hr./month, net/kw. hr.	4.5¢	5.0¢	5.5¢	5.5¢
N. 400 " " " "	3.5	3.5	3.5	3.7
N. 1,000 " " " "	3.0	3.0	3.0	3.0
N. 1,500 " " " "	2.5	2.5	2.5	2.5
Excess " " " "	2.2	2.2	2.2	2.2

Availability—This schedule is available to commercial customers for lighting and appliance use. Single-phase motors that do not exceed the limits defined in the electric service rules for motors connected to commercial lighting service may be served under this schedule.

Prompt Payment of Bills—The net bill shall be increased 5% of the first $25 plus 1% of the excess if payment is made after expiration of the prompt payment period of approximately ten days, as indicated on each bill.

Minimum Charge—The fixed charge will be the minimum charge for lighting, small non-motive appliances (individually 3 kw. or less) and single phase motors that meet the limitations of the electric service rules for motors connected to commercial lighting service. The minimum monthly charge shall be increased $.50 net per month for each 1 kw. or fraction thereof of nonmotive appliances individually greater than 3 kw. For purposes of determining the minimum charge, a KVA of equipment rated in KVA shall be considered equal to 1 kw.

[1] Effective in Antigo, De Pere, Duck Creek, Green Bay, Marinette, McDill, Merrill, Oconto, Oshkosh, Park Ridge, Plover, Rhinelander, Rothschild, Schofield, Stevens Point, Wausau.

[2] Effective in Brillion, Chilton, Crandon, Gravesville, Kronenwetter, Mosinee, Peshtigo, Tomahawk, Waupaca.

[3] Effective in Brokaw, Casco, Crivitz, Denmark, Edgar, Elcho, Lena, Luxemburg, Manitowoc-Two Rivers Suburban Area, Marathon, Minocqua, Mishicot, Reedsville, St. Nazianz, Stockbridge, Suring, Three Lakes, Valders, Wabeno-Soperton, Wausaukee, Woodruff, Wrightstown.

[4] Effective in Abrams, Allenville, Amberg, Anston, Argonne, Armstrong, Creek, Athelstane, Baileys Harbor, Bancroft, Bay Settlement, Beaver, Bellevue, Big Suamico, Blackwell, Branch, Brockville, Brookside, Brothertown, Bruemmer Park, Brussels, Butte des Morts, Carter, Cato, Cavour, Cedar Lake, Chapel Ridge, Clarks Mills, Collins, County Line, Dunbar, Egg Harbor, Ellis, Ellison Bay, Elo, Ephraim, Fish Creek, Fisk, Flintville, Forest Junction, Forestville, Francis Creek, Gleason, Greenleaf, Grimms, Hayes, Hayton, Hazelhurst, Hiles, Institute, Irma, Jacksonport, Jericho, Junction City, Kellners-

General Power

	Cp–1[5]	Cp–2[6]	Cp–3[7]	Cp–4[8]
Rate				
Fixed Charge, net per month	$.75	$.75	$.75	$.75
Energy Charge				
1st 100 kw. hr.—mo., net per kw. hr.	4.5¢	5.0¢	5.5¢	5.5¢
N. 400 " " " "	3.5	3.5	3.5	3.7
N. 1,000 " " " "	3.0	3.0	3.0	3.0
N. 1,500 " " " "	2.5	2.5	2.5	2.5
Excess " " " "	2.2	2.2	2.2	2.2

Availability—This schedule is available for all motive, heating, and other commercial or industrial applications but not for auxiliary, break-down, standby, or other partial power service. The customer may take lighting or other commercial or industrial service through the power meter, subject to the rules hereinafter stated.

Prompt Payment of Bills—The net bill shall be increased 5% of the first $25 plus 1% of the excess if payment is made after expiration of the prompt payment period of approximately ten days, as indicated on each bill.

Minimum Charge—The minimum charge shall be $.50 net per month per horse power, or fraction thereof, of aggregate connected load but not less than $.75 net per month. In the determination of connected load for purposes of determining the minimum charge, the following equipment will be omitted:

1. Single phase motors individually 3 hp. or less in size.

2. Heating or other nonmotive equipment individually 3 kw. or less in size.

3. Transformers and regulatory equipment used to convert power for use as lighting.

Nonmotive equipment rates in kw. or kva. shall be converted to horse power in the ratio of one kw. or one kva. equal to 1 hp.

Minimum Charge at Times of Reduced Installation—The minimum charges of this schedule assume continuous use of service for extended periods and do not permit temporary complete disconnection in order to avoid paying minimum charges. However, where at least 20% of the installation used in determining the minimum charge is disconnected for at least one full billing period, the minimum charge during each such period shall be based on the installation remaining connected plus one-fourth of the portion disconnected, but shall in no case be less than $.75 net.

Customer is required to advise the company in writing in advance regarding disconnection. Company may seal the apparatus or circuits against use or may install means of recording or limiting the service.

Special Rules—The use of lighting or other single phase load supplied through three phase services shall not unbalance the load per phase more than 3 kva. or unbalance the current per phase more than 10%, whichever is greater.

Service supplied under this schedule shall be at the company's standard available power voltage and at power regulation. Where lighting or other service requires voltage or regulation different from the service supplied, the customer will furnish such transformer or regulating equipment as may be necessary to utilize such service.

Term of Contract—Minimum period of one year.

Industrial Power

Rate

	Cp–10[9]	Cp–14[10]
Demand Charge:		
1st 2 kw. or less for, net per month	$4.00	$5.00
N. 8 kw. or less at, net per month	2.00	2.50
N. 40 kw. or less at, net per month	1.60	1.60
N. 50 kw. or less at, net per month	1.35	1.25
N. 200 kw. or less at, net per month	1.10	1.10
Excess kw. or less at, net per month	1.00	1.00

ville, King, Lac du Flambeau, Lake Tomahawk, Lakewood, Lark, Larrabee, Larsen, Little Rapids, Little Suamico, Louis Corners, Maplewood, Meribel, Menchalville, Middle Inlet, Mikesville, Monico, Morrison, Mountain, New Franken, Newton, Oneida, Parfreyville, Pelican Lake, Pembine, Pensaukee, Pickett, Polonia, Potter, Quarry, Quinney, Rio Creek, Rockwood, Rural, Sayner, Sister Bay, Sobieski, Stangelville, Taus, Timothy, Tisch Mills, Townsend, Valmy, Wayside, Whitelaw, Winchester, Winnebago.

[5] Effective in same communities as Cg–1, and also Algoma, Kewaunee, and Sturgeon Bay, in which rate applies only to loads over 25 hp. and Manitowoc and Two Rivers in which rate applies only to loads over 40 hp.

[6] Effective in same communities as Cg–2.

[7] Effective in same communities as Cg–3.

[8] Effective in same communities as Cg–4.

[9] Effective in Antigo, King, McDill, Merrill, Park Ridge, Plover, Rothschild, Schofield, Stevens Point, Tomahawk, Waupaca, Wausau.

[10] Effective in all rural territory served in the Wisconsin Valley division, and in Argonne, Bancroft, Brokaw, Crandon, Edgar, Elcho, Ellis, Gleason, Hazelhurst, Hiles, Irma, Junction City, Kronenwetter, Lac du Flambeau, Lake Tomahawk, Marathon, Minocqua, Monico, Mosinee, Pelican Lake, Polonia, Sayner, Three Lakes, Woodruff.

Energy Charge.

1st 2,000 kw. hr. per mo., net per kw. hr.	1.5¢	1.5¢
N. 3,000 kw. hr. per mo., net per kw hr.	1.2¢	1.2¢
N. 95,000 kw. hr. per mo., net per kw. hr.	.9¢	.9¢
Excess kw. hr. per mo., net per kw. hr	.7¢	.7¢

Availability—This schedule is available for all motive, heating and other industrial purposes. Incidental lighting service may be included provided that the total charge per year for power service is not less than $1,200 and that the lighting connected load does not exceed 15% of the combined connected load.

Prompt Payment of Bills—The net bill shall be increased 5% of the first $25 plus 1% of the excess if payment is made after expiration of the prompt payment period of approximately ten days, as indicated on each bill.

Minimum Charge—The demand charge.

Power Factor Clause—For installations having a billing demand of 100 or more kw. during any of the twelve months previous to the close of the current billing period: the monthly net charge for service shall be decreased .15% for every whole per cent increase in average monthly power factor above 80% lagging up to unity or increased .3% for every whole per cent decrease in average monthly power factor below 80% lagging.

The average monthly power factor shall be determined monthly at the option of the company, by instruments designed to record power factor graphically, by the use of the reactive component meter which records only lagging reactive kilovolt-ampere hours, or by other suitable instruments. When a reactive component meter is used, the monthly average power factor shall be calculated from the monthly use of kilowatt hours "A" as obtained from the integrating watt hour meter and the monthly use of lagging kilovolt-ampere hours "B" as obtained from the reactive component meter by the following formula: monthly average power factor equals "A" divided by the square root of (A squared plus B squared).

Determination of Demand—The demand shall be the greatest 15-minute integrated load observed or recorded during the month, except that in no event shall the billed demand for any month be less than 50% of the highest billed demand for the preceding eleven months.

Where the customer's connected load is in excess of 10 kw., permanent demand meters of standard type will be installed and the demand will be determined by monthly readings therefrom.

Where no demand meter is installed or when the demand cannot readily be determined by other means, the company may assess the kilowatt demand as follows:

90% of the first 10 kw. of connected load.
80% of the next 40 kw. of connected load.
65% of all over 50 kw. of connected load.

Special Rules—The use of lighting current shall not unbalance the current per phase greater than 10%. The customer shall assume all necessary expense in equiping himself for the conversion of power for use as lighting.

Term of Contract—Minimum period of one year.

Water and Sewage Pumping
Effective in Rhinelander
Rate

Applied separately to water pumping, and to sewage pumping, but all water pumping loads combined for billing purposes.

First 500 kw. hr. per month at	4.0¢	net per kw. hr.
Next 500 kw. hr. per month at	3.0	" " "
Next 1,000 kw. hr. per month at	1.5	" " "
Next 8,000 kw. hr. per month at	1.0	" " "
Excess kw. hr. per month at	.9	" " "

Prompt Payment of Bills—Payment for service shall be made not later than forty-five days after statement is issued.

Minimum Charge—$1.50 per month per horsepower connected.

Commercial and Industrial Service—Gas—Cg–1

Effective in De Pere, Green Bay, Kohler, Oshkosh, Sheboygan, Sheboygan Falls.

Availability—This schedule is available to commercial and industrial customers for all purposes.

Rate

First 3,000 cu. ft. per month at	$1.35	net per M cu. ft.
Next 7,000 cu. ft. per month at	.90	" " "
Next 40,000 cu. ft. per month at	.80	" " "
Next 50,000 cu. ft. per month at	.70	" " "
Excess cu. ft. per month at	.55	" " "

Prompt Payment of Bills—The net bill shall be increased 5% of the first $25 plus 1% of the excess if payment is made after expiration of the prompt payment period of approximately ten days, as indicated on each bill.

Minimum Charge—$1.05 gross, $1 net per month.

Commercial and Industrial Service—Gas—Cg–2

Effective in Chilton, Elkhart Lake, Gravesville, Kiel, Marinette, New Holstein, Peshtigo, Plymouth, Stevens Point, Two Rivers.

Availability—This schedule is available to commercial and industrial customers for all purposes.

Rate

First 3,000 cu. ft. per month at	$1.45	net per M cu. ft.
Next 7,000 cu .ft. per month at	.90	" " "
Next 40,000 cu. ft. per month at	.80	" " "
Next 50,000 cu. ft. per month at	.70	" " "
Excess cu. ft. per month at	.65	" " "

Prompt Payment of Bills—The net bill shall be increased 5% of the first $25 plus 1% of the excess if payment is made after expiration of the prompt payment period of approximately ten days, as indicated on each bill.

Minimum Charge—$1.05 gross, $1 net per month.

Commercial Water and Space Heating—Gas—Cw-1

Effective in DePere, Green Bay, Kohler, Oshkosh, Sheboygan, Sheboygan Falls.

Availability—This schedule is available to commercial customers for heating buildings where gas is the major fuel, and/or service for operation of "self-action" water heaters. Service to refrigerators or incinerators may be included under this rate in addition to that used for space heating or water heating.

Prompt Payment of Bills—The difference between the gross and net rates shall constitute a discount if the bill is paid within the discount period of approximately ten days, as indicated on each bill.

Minimum Charge—The minimum monthly charge for service to water heating installations shall be $2 gross, $1.80 net.

Space heating customers are required to guarantee minimum annual charges equal to $.60 net per year per cubic foot of hourly input (rated capacity) of the heater for each yearly period beginning July 1; in no case more than $100 net per year.

Fuel Clause—The 55-cent rate for gas in excess of 10 M cu. ft. per month shall be reduced 1¢ per M cu. ft. for each whole .2¢ reduction in the price of No. 3 Fuel Oil or its equivalent, from 10¢ per gallon, provided that such rate for gas shall not be less than 45¢ per M cu. ft. The price of oil for purposes of this clause shall be the average of the daily quotations by Standard Oil Company of Indiana for deliveries in bulk lots to customers' premises in the city of Sheboygan or the city of Green Bay, whichever is lower, during the calendar month preceding billing.

Rate

		Gross	Net	
First	1,500 cu. ft. or less per mo. for	$2.00	$1.80	per mo.
Next	8,500 " " " " at	.76	.75	" M cu. ft.
Excess	" " " "	.56	.55	" "

UTAH PUBLIC SERVICE COMMISSION

Re Salt Lake City Lines et al.

Case No. 2776
July 12, 1944

APPLICATION *for approval of transfer of local transportation properties by one corporation to another; granted.*

Consolidation, merger, and sale, § 65 — Intervention — Tardy application.

1. A petition by preferred stockholders of a holding company to intervene in a proceeding to secure approval of the sale of a subsidiary traction company should be denied where the petition is filed after hearings have been closed and all interested parties have been given ample time and opportunity to present their interests, p. 204.

Valuation, § 51.1 — Sale price — Capitalization of earnings — Abnormal years — War.

2. The years 1942 and 1943, owing to abnormal war conditions, cannot be considered indicative of what postwar earnings of a local transportation system will be as a basis for capitalization of earnings to determine the reasonableness of a proposed purchase price, p. 208.

Consolidation, merger, and sale, § 29 — Objection to foreign control.

3. Personal views of the Commission, looking with disfavor on foreign holding company control of local transportation utilities, must, in a proceeding to obtain Commission approval of acquisition of such properties by a subsidiary of a foreign corporation, be subordinated to conform with the intent of the controlling statute, which does not provide for preferential treatment of a company with no foreign affiliation and does not say that a locally owned company shall have preference, p. 209.

Intercorporate relations, § 14.2 — Contracts with affiliated interests — Filing.

4. A subsidiary of a foreign corporation, which is authorized to acquire local transportation properties, should be required to file with the Commission copies of all contracts entered into by it with any company which is a stockholder either of such subsidiary or of the parent corporation, or in which the officers or stockholders of either of these companies are interested, where it contemplates entering into arrangements or agreements with such affiliated interests for the purchase of busses, gasoline, and tires or tire mileage, p. 210.

Consolidation, merger, and sale, § 45.1 — Solicitation of bids — Necessity of publicity.

5. A public utility company proposing to sell local transportation properties is under no statutory compulsion to make widespread publicity of the matter, although as a matter of public policy publicity should be given to the proposal in order that a number of potential buyers may have an opportunity to submit bids, p. 211.

Consolidation, merger, and sale, § 52 — Public interest in purchase price — Stockholders — Patrons.

6. The question of the reasonableness of the purchase price of transportation properties must be approached from at least two angles—the interest of stockholders and the interest of patrons, p. 212.

Consolidation, merger, and sale, § 8 — Jurisdiction of Commission — Fixing of purchase price.

7. Neither the fixing of the price at which a utility property may be sold nor the finding of a purchaser for a property that is for sale is the province of the Commission; but one phase of the problem before it, in passing upon a petition for authority to transfer the property, is to determine whether the agreed price is fair and reasonable to all parties, p. 212.

Consolidation, merger, and sale, § 62 — Scope of proceedings — Accounting entries.

8. Proposed accounting by the seller and purchaser of transportation properties, in recording the sale and purchase of the properties, should not be passed upon at the time of the approval of the sale, as the Commission's authority over accounting entries is a matter of continuing jurisdiction, and it is preferable to require each company to submit at a later date the actual entries proposed to be made, p. 212.

Accounting, § 4 — Authority of Commission.

Discussion of the authority of the Utah Commission over the accounting methods and accounts of each public utility under its jurisdiction, p. 210.

(CARLSON, Commissioner, dissents.)

APPEARANCES: Paul H. Ray and J. L. Haugh, for Salt Lake City Lines; Gerald Irvine and George R. Corey, for Utah Light and Traction Co.; Clinton D. Vernon, for Public Service Commission of Utah; A. C. Melville, for Airway Motor Coach Lines, Inc.; Lorenzo E. Elggren, for Consumers Welfare League of Utah.

By the COMMISSION:

[1] An application in the above-entitled matter was filed with the Commission on April 27, 1944. The matter came on regularly for hearing before the Commission at the state capitol in Salt Lake City, Utah, on May 18, 1944, after due and legal notice to interested parties. At the conclusion of the hearing on May 18, 1944, at the request of Mr. Lorenzo E. Elggren, president of Consumers Welfare League of Utah, and at the request of the Commission's staff, the matter was continued to May 31, 1944, on which date further testimony was adduced, and the matter was submitted to the Commission for its consideration and determination.

A petition in intervention and for further hearing signed by seven persons purporting to be preferred stockholders of Utah Power & Light Company was filed with the Commission on June 21, 1944. An identical petition signed by four other persons also purporting to be preferred stockholders was filed on June 23, 1944. The signers of these two petitions represent that they own in the aggregate 394 shares of preferred stock of Utah Power & Light Company. As stated above, the application of the Utah Light and Traction Company and Salt Lake City Lines was filed with this Commission April 27, 1944. At that time, much publicity was given the matter and in addition the regular legal notice of hearing was published on May 3 and 4, 1944, in a daily newspaper having general circulation throughout the state of Utah. No preferred stockholders of Utah Power & Light Company appeared at either of the hearings in this matter to oppose approval of the contract between Utah Light and Traction Company and Salt Lake City Lines.

It is our conclusion that all interested parties have been given ample time and opportunity to present their interests in this matter to the Commission. The Commission has given careful consideration to the petitions and the allegations contained therein and is of the opinion that the petitions of said preferred stockholders should be denied.

The following report, findings, and conclusions are based upon the entire record in this matter:

Salt Lake City Lines is a corporation organized under and existing by virtue of the laws of the state of Utah. A certified copy of the articles of incorporation of said company was admitted in evidence as Exhibit 6. The said Salt Lake City Lines (herein-

after sometimes called City Lines) represents that it is organized and existing for the purpose of owning and operating urban transportation systems.

Utah Light and Traction Company is a corporation organized under and existing by virtue of the laws of the state of Utah with its office and principal place of business in Salt Lake City, Utah. The said Utah Light and Traction Company is the owner and operator of a street railway, electric trolley coach, and gas bus transportation system located in and immediately adjacent to Salt Lake City, Utah. Utah Light and Traction Company (hereinafter sometimes called Traction Company) is a wholly owned subsidiary of Utah Power & Light Company (hereinafter sometimes called Power Company).

Under the application now before us the applicants request the Commission to issue an order approving and consenting to the acquisition of the transportation property of Traction Company by City Lines in accordance with and under the terms of an agreement attached to the joint application, and that the Commission approve the transfer of certificates of convenience and necessity held by Traction Company, or in the alternative, that a new certificate of convenience and necessity be granted to City Lines covering the operation of electric trolley coaches, electric street cars, and gas busses upon and over the streets shown on a map attached to application.

Traction Company has been engaged in the business of transportation as a common carrier in Salt Lake City and areas adjacent to Salt Lake City since its formation in 1914. It also owns certain properties and facilities for the production, transmission, and distribution of electric energy. These properties are leased to and operated by Utah Power & Light Company. Its transportation system for many years consisted entirely of a street railway system, but in more recent years the system has gradually been converted largely into a gas bus system and an electric trolley coach system. Briefly described, its properties comprise certain railway lines consisting of railway trackage, overhead trolleys, and appurtenances on and along certain streets in Salt Lake City; rolling stock consisting of 8 street cars, 26 electric trolley coaches, except tires, 146 motor busses, except tires; several parcels of land, and the existing improvements thereon consisting of a car barn and bus garage, machine shop, repair shop, storeroom, sand house, heating plant, water tower, gasoline storage tanks, pump house and equipment, oil house and fence located thereon, together with all furniture, fixtures, machinery, tools, and equipment located therein, and materials and other supplies pertinent to said system. Traction Company has agreed to sell and City Lines has agreed to buy these properties pursuant to an agreement dated April 20, 1944, for $675,000 cash, plus the amount of all prepaid premiums on insurance policies transferred to City Lines, and the amount of prepaid taxes on or for the operation of said transportation property, plus the amount of working funds advanced to operators and other employees, plus the amount of other accounts prepaid by seller in connection with the main-

tenance or operation of said transportation property. As further consideration for the purchase of said properties, City Lines has agreed to accept and assume the full future liability under franchise granted to it by Salt Lake City under date of April 25, 1944, to remove trackage and repair streets in Salt Lake City if and when the street railroad lines still remaining on the streets in Salt Lake City are removed and abandoned. The estimated net cost of removing such trackage and repairing the streets in question is approximately $250,000.

Traction Company has made a determination of the original cost of transportation property to be sold. This statement shows original cost of transportation property in service at $2,530,536.40 and an amount of $529,082.79 in utility plant acquisition adjustment account making a total of $3,059,439.19. A pro forma balance sheet as of July 1, 1944, shows a reserve for property retirement of $1,941,719. This reserve includes an amount of $1,095,308.26 credited to said reserve in 1943 by a charge to surplus, which charge resulted in increasing the surplus deficit per the pro forma balance sheet as of July 1, 1944, before sale of transportation property to $1,894,424. After the sale of transportation property, also according to the pro forma balance sheet, such deficit will be increased to $2,362,574.

It is the intention of Power Company, the parent company of Traction Company, to acquire the electric properties of Traction Company at an early date. In acquiring the electric properties of Traction Company, it is the intention of Power Company to assume the loss sustained by Traction Company in the sale of its transportation properties through an appropriate forgiveness of debt by Power Company, which in turn will reduce Power Company's investment in Traction Company, and thus be reflected in the surplus account of Power Company.

The articles of incorporation of City Lines provide for one class of stock only, designated as common stock. The total number of authorized shares is 100,000 with a par value of $10 per share of stock, making an aggregate par value of $1,000,000. City Lines proposes to sell 72,500 shares of its common capital stock at the present time from which it will realize $725,000. $675,000 of this amount will be paid to Traction Company in payment for the properties it proposes to acquire, and $50,000 will be retained in the treasury of City Lines to provide a working fund. The sole stockholder of City Lines, except for directors qualifying shares, will be Pacific City Lines, Inc., a Delaware corporation. The latter-named company is a corporation organized for the purpose of acquiring, organizing, and developing city transportation system. It has subsidiaries operating in Eureka, Fresno, Glendale, Inglewood, Passadena, Sacramento, San Jose, Santa Clara, and Stockton, California, and in Butte and Great Falls, Montana, and Bellingham and Everett, Washington. It has both common and preferred stocks outstanding. The common and voting stock of Pacific City Lines, Inc. is owned approximately 50 per cent by officers of the company, namely J. L. Haugh, president, T. G. Man-

ning, vice president, W. E. Anderson, vice president, R. Stuart Moore, vice president, and D. M. Pratt, general manager; approximately 24 per cent by Federal Engineering Corporation, a wholly owned subsidiary of Standard Oil Company of California; 24 per cent by General Motors Corporation; and 2 per cent by Firestone Tire and Rubber Company. The preferred stock is all owned by the last three named companies.

The corporate structure of City Lines does not contemplate any indebtedness in the form of bonds or other long-term obligations at the outset of the company's operations. Its corporate structure will consist only of common capital stock.

The officials of City Lines made an appraisal of the physical property which it contemplates acquiring from Traction Company. This appraisal shows a total estimated value of $925,000. The officials of this company consider, therefore, that the total purchase price of the property is $925,000 which figure is made up of $675,000 cash to be paid Traction Company under the agreement of sale and purchase plus $250,000 representing the estimated net cost of track removal and street repairs.

If the present application is granted, and City Lines acquires the properties under consideration, it is the purpose and intention of the officials of said company to make a complete rehabilitation and modernization of the plant and equipment. The street cars and tracks will be abandoned and removed as soon as war conditions and restrictions permit. The electric trolley coaches and overhead wiring will be continued in use for a few years until it becomes necessary through depreciation or obsolescence to replace the coaches, at which time they will be replaced with motor busses. It is contemplated that over a period of five years, practically the entire fleet of rolling stock will be replaced with new equipment. Fifteen new gas-driven, hydraulic-transmission, 40-passenger busses have been ordered, which, with the approval of the Office of Defense Transportation, will be delivered in July or August of this year. Sixteen additional Diesel-driven, hydraulic transmission, 36-passenger busses have been ordered for delivery early next year. The total outlay for the thirty-one new busses on order will amount to approximately $375,000. The company's plans also contemplate the rearrangement and remodeling of the shops to make them more adaptable to bus operations.

The board of commissioners of Salt Lake City, Utah, passed an ordinance on April 25, 1944, approving, ratifying, and confirming the transfer to Salt Lake City Lines, its successors and assigns, of certain rights, privileges, and franchises heretofore granted to, held, possessed, and exercised by Traction Company. Under the terms of this ordinance, City Lines is privileged and authorized until July 1, 1955, to operate over and upon the streets of Salt Lake City, Utah. This franchise also provides that upon abandonment of electric railway service, the said City Lines shall either remove the rails and repair the streets or cover said rails as directed by the board of city commissioners. A license tax in an amount equal to one-half of one per cent of

gross passenger revenues derived from operations within the city also is provided for, such license tax to be not less than $5,000, nor more than $15,000 annually.

At the hearing held on May 31, 1944, Lorenzo E. Elggren appeared in opposition to the application and filed a written protest on behalf of Consumers Welfare League of Utah. Mr. Elggren did not offer any testimony, but made a statement for the record and submitted his written protest. A letter of transmittal attached to the written protest represents ". . . that the protest attached is speaking for the citizenship of our city and state concerned, which also includes stockholders of the Utah Power & Light Company." The essence of Mr. Elggren's protest appears to be that the price at which the properties are to be sold is inadequate, and that the sale, if consummated, would react against the best interests of the public concerned and prove a serious detriment to Power Company, and particularly to the preferred stockholders of the latter-mentioned company.

[2] Mr. Elggren represents that the operating income (operating revenues less operating expenses, depreciation, and taxes) of Traction Company for the 10-year period 1934 to 1943, as shown by the reports of said company to the Commission average $120,000 per year (actually the reports on file with the Commission show an average annual operating income for this period of $102,614.-03). Mr. Elggren's comments in this respect seem to carry the implication that on the basis of the average earnings for this period a value in excess of the proposed purchase price is indicated by a capitalization of earnings. Without admitting that this method of determining value is appropriate for regulatory purposes, we wish to point out that at least two years in the 10-year period referred to are years in which war activities have produced very substantial increases in the operating revenues and earnings of Traction Company. The two years referred to are 1942 and 1943. Operating revenues in 1942 increased 53.6 per cent over 1941, while the operating income of the company increased 188.7 per cent. Operating revenues in 1943 were approximately 97 per cent higher than in 1941, while operating income was about 390 per cent higher than in 1941. If the two years, 1942 and 1943, are eliminated, the remaining 8-year period from 1934 to 1941 shows an annual average operating income of $62,611.55.

We are inclined to feel that the years 1942 and 1943, due to the abnormal conditions created by war activity, cannot be considered indicative of what the postwar earnings of the transportation system in Salt Lake City will be. If the future may be judged at all by the past, we think a year, or a period of years, prior to 1942 would be a better guide post, and even then, such figures must be tempered by judgment as to the probable future conditions after the war emergency is over. Unquestionably, the transportation revenues and earnings of the Salt Lake City transportation system will be substantially less in postwar years than during the war years. It is a matter of common knowledge that many people will return to the practice of using their private auto-

mobiles for transportation after restrictions on gasoline and tires have been removed.

In addition to the evidence in the record as to the value of the property introduced by City Lines is an estimate by Stone and Webster Service Corporation of New York, which organization, at the request of Traction Company, made an inspection of the property to determine a fair price offer to be made by an outside party. This organization advised Traction Company that any offer in excess of $685,000 would be a fair offer, taking into consideration the paving liability, tax matters, etc.

We come now to a discussion of whether or not the proposed transaction is or will be in the public interest. The controlling statute under which we must make this determination is found in § 76–4–32, Utah Code Annotated, 1943, which reads as follows:

"Hereafter no public utility shall acquire by lease, purchase, or otherwise the plants, facilities, equipment, or properties of any other public utility engaged in the same general line of business in this state, without the consent and approval of the Public Utilities Commission. Such consent shall be given only after investigation and hearing and finding that said purchase, lease, or acquisition of said plants, equipment, facilities, and properties will be in the public interest."

There is no contention that public convenience and necessity does not require passenger transportation service in the area now served by Traction Company. There is no issue on this point. The question of public interest, however, becomes a matter at issue in the case now before us.

It is difficult to formulate a comprehensive definition of "public interest." We believe, however, that the test of whether the approval of the proposed transfer of Traction Company properties will result in subserving the public interest should be based upon a proper and careful survey and appraisal of the evidence and facts in the case.

The applicant, City Lines, according to the record, is adequately financed to render the service proposed by it. Likewise, it appears that the affiliates of the applicant have had broad experience in the field of city transportation and that that experience is available to the officers and management of City Lines.

The president of City Lines testified as to the proposed future program of the company in the way of purchasing new equipment and modernizing the plant and facilities. This is discussed at some length above. The Commission relies on the statements thus made as a commitment of the future policy of the company in this respect should the present application be granted. This Commission is very definitely interested in seeing that Salt Lake City has modern and efficient transportation service.

[3] City Lines will be a wholly owned subsidiary of a holding company Pacific City Lines. The company will not be under local control in that local capital will not be represented among its owners. This Commission has evidenced concern in other cases about foreign holding company control of operating utilities. As a general policy we are inclined to look with disfavor on for-

eign holding company control because of the evils oftentimes attending though not necessarily inherent in such control. Personal views on this question, however, must be subordinated to conform with the intent of the controlling statute. The statute quoted above does not provide for preferential treatment of a company with no holding company affiliation as against one under control of a holding company. Neither does it say that a locally owned company shall have preference over a foreign corporation. Under a broad interpretation of the statute, however, we think these matters may be evaluated by the Commission in their relation to the other aspects of the case.

[4] The evidence shows that City Lines contemplates entering into arrangements or agreements with General Motors, Standard Oil Company, and Firestone Tire and Rubber Company for the purchase of busses, gasoline, and tires or tire mileage, respectively. As noted above, these three concerns are stockholders of Pacific City Lines. Contracts for the purchase of materials used by a transportation company are not uncommon. At the present time, Traction Company has a contract with a nonaffiliated company covering the furnishing of rubber for the equipment operated by it. It does not have similar agreements for the purchase of gasoline and oil, or other equipment. It is represented by City Lines that the purpose of entering into such agreements is to insure supply and quality, and to insure lower costs than could otherwise be obtained.

It is conceivable that purchase contracts such as those discussed above, due to the close affiliation of City Lines with the other three contracting parties, might operate in a way that would be detrimental to the public interest. Such could be the case if the price paid under the agreement was in excess of the price for which the same quality products might be obtained elsewhere under terms of an insured supply.

This Commission has broad powers over contracts entered into by public utilities for the expenditure of corporate funds. Section 76–4–28, Utah Code Annotated, 1943, provides as follows:

"Every public utility when ordered by the Commission shall, before entering into any contract for construction work or for the purchase of new facilities or with respect to any other expenditures, submit such proposed contract, purchase or other expenditure to the Commission for its approval; and, if the Commission finds that any such proposed contract, purchase or other expenditure diverts, directly or indirectly, the funds of such public utility to any of its officers or stockholders or to any corporation in which they are interested, or is not proposed in good faith for the economic benefit of such public utility, the Commission shall withhold its approval of such contract, purchase, or other expenditure, and may order other contracts, purchases, or expenditures in lieu thereof for the legitimate purposes and economic welfare of such public utility."

It must be remembered also that the Commission has full authority over the accounting methods and accounts of each public utility under its jurisdiction. That authority is broad

enough to determine the propriety of any entries in a utility's books. We think our authority is sufficient in this respect to prevent intercorporate manipulations detrimental to the public interest.

We think it will be in the public interest to require City Lines to file with the Commission a copy of all contracts entered into by it with any company which is a stockholder of either City Lines or Pacific City Lines or in which the officers or stockholders of either of these companies are interested.

[5] During the course of the proceedings in this case, the adequacy of the publicity given and invitations for bids for the sale of the properties by Traction Company was questioned. The record shows that Traction Company sent a letter to five parties advising that the transportation properties of the company were for sale. These parties were National City Lines, Inc., Chicago, Illinois; Julian M. Bamberger of Bamberger Railroad Company, Salt Lake City; E. G. Bennett, as representing the Eccles Transportation interests in Utah; Pacific City Lines, Oakland, California; and Roy Hauer, Mack International Truck Company, New York city. Each of these parties was invited to consider the purchase of the transportation facilities of Traction Company. All five parties to whom the letter was sent investigated the matter but the only offer received was from Pacific City Lines. No other publicity of the proposed sale was made by Traction Company.

It is the view of the Commission that as a matter of public policy greater publicity should have been given to the proposal to sell in order that other potential buyers could have had an opportunity to submit bids. We say this fully cognizant of the fact that the properties were not being sold at public auction or forced sale It would appear also that the seller was not under any statutory compulsion to make widespread publicity of the matter. Whether greater publicity would have produced additional bids of substantially higher amounts is a matter of conjecture.

The preferred stockholders of Power Company have a direct interest in this matter. The assets of Traction Company form part of the total assets which provide the equity of these stockholders because of the fact that Traction Company is a fully owned subsidiary of Power Company. Power Company has issued an outstanding $42,000,000 principal amount of bonds. Power Company advanced $11,813,000 of the proceeds from the sale of these bonds to Traction Company to be used by it to pay at maturity its then outstanding bonds. In consideration of this advance Traction Company executed an indenture to the trustee under the Power Company's mortgage and deed of trust creating a lien on the electric property and part of the transportation property of Traction Company. Under the terms of the indenture and the mortgage and deed of trust the proceeds from the sale of mortgaged property must be deposited with the trustee and used to retire outstanding bonds. The proceeds from the sale of the transportation facilities, therefore, will be turned over to the trustee under the mortgage and deed of trust of Power Company, to be used to retire

outstanding bonds. The trustee will then release such transportation properties from said lien.

It hardly need be stated that it is to the advantage of the preferred stockholders of Power Company that the debt of the company be reduced. It follows that with a decrease in debt the annual interest charge will be less and the amount available for dividends will be greater.

If the amount received from the sale of the transportation facilities of Traction Company is less than an adequate and reasonable figure it is apparent that the preferred stockholders of Power Company have been deprived of a part of their equity. Likewise, under such an assumption, the amount of the reduction in debt and annual interest charges of Power Company will be less than would be the case if a higher sale price was realized.

[6] The matter resolves itself into one question—is the sale and purchase price reasonable. This question must be approached from at least two angles. Besides the interest of the preferred stockholders there is the interest of the future patrons of the transportation system. Presumably the higher the investment in the transportation facilities the higher will be the return to which the owner of these facilities is entitled.

The price which the seller and buyer agreed upon covering the properties under consideration was arrived at after the buyer had examined the property and books of Traction Company and had devoted considerable time to an investigation. The record is devoid of any showing that the transaction was anything but an "arm's-length" negotiation. There appears to be no financial or corporate relationship, direct, or indirect, between Pacific City Lines, on the one hand, and Traction Company, Power Company, or their affiliated corporations, on the other hand.

[7] It is our interpretation of the statute that it is not the province of the Commission either to fix the price at which a utility property may be sold or to find a purchaser of a property that is for sale. We think that one phase of the problem before us is to determine whether the price agreed upon by and between the contracting parties is fair and reasonable to all parties in interest or affected thereby, such determination to be given proper weight in reaching a decision as to whether or not the proposed transaction is in the public interest.

[8] Traction Company offered in evidence a statement showing proposed journal entries to record the sale of the transportation properties. Likewise, City Lines submitted a tentative opening entry. The Commission is of the opnion that the proposed accounting of the two companies in recording the sale and purchase of the properties should not be approved or passed upon at this time. The Commission's authority over accounting entries is a matter of continuing jurisdiction. We think it preferable to require each company to submit at a later date the actual entries proposed to be made. The proposed entries will then receive the Commission's consideration.

After careful consideration of the record in this case and based upon the

foregoing report the Commission finds and concludes as follows:

1. That the sale to City Lines of the transportation properties of Traction Company described in that certain agreement dated April 20, 1944, between Utah Light and Traction Company and Salt Lake City Lines is and will be in the public interest.

2. That City Lines is fit, willing, and able to render service as a common carrier of passengers in the area covered by the present application.

3. That upon consummation of the sale and transfer Traction Company should be relieved of the duty and responsibility of rendering service as a common carrier of passengers and should be permitted to withdraw and cancel its filed tariffs, rules, and regulations applicable to said transportation system.

4. That the certificates of convenience and necessity held by Traction Company covering transportation operations should be canceled and annulled.

5. That a new certificate of convenience and necessity should be issued to City Lines authorizing it to operate an electric trolley coach, electric streetcar, and motorbus transportation system upon and over the streets shown upon the map attached to the application.

The Commission concludes, therefore, that the application should be approved.

An appropriate order will follow. [Order omitted.]

CARLSON, Commissioner, dissenting: I have withheld my signature to the foregoing order and dissent to the action taken indicated in such order for the following reasons:

1. Preferred stockholders of Utah Power & Light Company, interested parties, have filed petitions in intervention and to be heard respecting the matter of approval or disapproval of the sale by Utah Light and Traction Company to Salt Lake City Lines of said Traction Company's transportation properties.

2. Said petitions in their allegations show matters material and relevant to the approval or disapproval of the sale of the Traction Company's transportation properties to Salt Lake City Lines and are of such nature and character that they should be considered by the Commission. Therefore, such petitions should be granted and the petitioners given an opportunity to be heard and to adduce such evidence as they may have.

3. Since the petitioners, preferred stockholders, have not had opportunity to be heard and, moreover, since their petitions in intervention and to be heard have been denied, I voted against the granting of the application for approval of the sale and hereby dissent from the order that said sale be approved.

PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission

v.

The Peoples Natural Gas Company

Complaint Docket Nos. 11380, Sub. 20 and 12683
July 24, 1944

PETITIONS *for rehearing of rate order in (1944) 53 PUR (NS) 110, following remand by superior court in (1943) 153 Pa Super Ct 475, 51 PUR(NS) 129, 34 A(2d) 375; petitions for rehearing dismissed.*

Procedure, § 32 — Rehearing — Governing principles.

1. The grant of rehearing, although a discretionary matter, is governed by the principles that where a proceeding is initiated by the Commission its disposition is fully within Commission control; that where matters involved can be made the subject of new proceedings, dismissal of a petition for rehearing decides nothing adversely to the petitioner; and that there should be an end to litigation and a record once closed should not be reopened to permit the presentation of evidence which could have been offered before the close of the record, p. 215.

Commissions, § 22 — Administrative duties — Controlling principles — Court decisions.

2. The Commission, although it must frequently decide doubtful questions of law material to proper performance of administrative duties, is governed by the principles embodied in specifically applicable decisions of the state courts, p. 216.

Appeal and review, § 71 — Remand to Commission — Proceedings bound by court decision.

3. A Commission, in a proceeding following remand by the court, is not at liberty to embark upon juristic expositions at variance with the court holdings even if it disagrees with court declarations of the law, p. 216.

Rates, § 4 — Constitutional rights — Municipalities and other customers.

4. Neither a city nor its citizens have any right of property protected in rate cases by the Fourteenth Amendment to the Federal Constitution, p. 216.

Valuation, § 39 — Rate base determination — Reproduction cost.

Discussion, in dissenting opinion, of the lack of evidentiary value of reproduction cost testimony in determining a rate base, and consideration of this measure of value in relation to provisions of Pennsylvania statutes relating to fair value, p. 217.

(BUCHANAN, Commissioner, dissents.)

By the COMMISSION: These matters are before us upon petitions of the city of Pittsburgh filed at C. 11380, Sub. 20, and of Mrs. Katherine Cassidy filed at C. 11380, Sub. 20 and C. 12683, asking rehearing. Mrs. Cassidy joins in the city of Pittsburgh petition as do approximately forty-three other consumers of The Peoples Natural Gas Company. Amended petitions were filed to correct several inaccurate factual averments in the original petitions and a further joinder of approximately sixty-eight consumers was also filed. Answers have been filed, briefs submitted, and oral argument presented.

The Cassidy petition might be dismissed for the reason that Mrs. Cassidy was not a party to the cases and thus has no standing to petition for rehearing. However, in view of the importance of the issues raised, we will consider all of the petitions and joinders as properly filed.

[1] Although the grant of rehearing is a discretionary matter, the following principles will govern in the absence of countervailing considerations:

1. Where the proceeding is one initiated by the Commission its disposition is fully within Commission control. Pittsburgh v. Public Utility Commission (1941) 145 Pa Super Ct 580, 40 PUR(NS) 191, 20 A(2d) 869; Pittsburgh v. Public Utility Commission (1943) 153 Pa Super Ct 83, 50 PUR(NS) 254, 33 A(2d) 641; Lenihan v. Tri-State Teleph. & Teleg. Co. (1940) 208 Minn 172, 34 PUR (NS) 144, 293 NW 601 (certiorari denied [1940] 311 US 711, 85 L ed 463, 61 S Ct 392).

2. Where the matters involved can be made the subject of new proceedings, the dismissal of a petition for rehearing decides nothing adversely to the petitioner. See Pittsburgh v. Public Utility Commission, *supra*.

3. There should be an end to litigation, and a record once closed should not be reopened to permit the presentation of evidence which could have been offered before the close of the record. Public Utility Commission v. Edison Light & P. Co. (1941) 22 Pa PUC 774, 41 PUR(NS) 41.

With the above general precepts in mind we turn to scrutiny of the situation before us. Our order of December 7, 1942, 47 PUR(NS) 385, was appealed by The Peoples Natural Gas Company (Peoples) and reversed at Peoples Nat. Gas Co. v. Public Utility Commission (1943) 153 Pa Super Ct 475, 51 PUR(NS) 129, 34 A(2d) 375. On February 16, 1944, 53 PUR (NS) 110, we issued an order accepting a settlement offer by Peoples, and directing a substantial reduction of rates and the payment of refunds totalling $500,000.

Petitioners contend as follows:

1. The Commission failed to comply with the superior court decision.

2. The superior court decision is no longer binding upon the Commission because of the opinion of the Supreme Court of the United States in Federal Power Commission v. Hope Nat. Gas Co. (1944) 320 US 591, 88 L ed 276, 51 PUR(NS) 193, 64 S Ct 281, which, for the Federal jurisdiction, greatly enlarged the ambit of rate-fixing discretion.

3. The Fourteenth Amendment to the Constitution of the United States assures to petitioners rights which have been violated by the Commission order.

4. Petitioners, particularly the city of Pittsburgh, should be afforded an opportunity to present evidence as to comparative rates, distribution of the rate burden as between the various classes of consumers, reproduction cost and rate of return.

5. The Commission final order was based upon data furnished ex parte by Peoples.

We cannot agree with petitioners' interpretation of the superior court opinion as requiring rehearing, and we deem our final order a full compliance with the court directives. Additionally, we must remember that, under similar circumstances, the Commission held further hearings and thereby incurred the criticism of the court: Scranton Spring-Brook Water Service Co. v. Public Service Commission (1935) 119 Pa Super Ct 117, 124–126, 14 PUR(NS) 73, 181 Atl 77. We therefore reject this contention of petitioners, leaving the city free to apply to the court for clarification of an opinion which we think plainly permits the course of action which we have followed.

[2–4] The issues involved and the points raised with relation to the Hope Natural Gas Company decision and the protection afforded consumers by the Fourteenth Amendment to the Federal Constitution are not, as we see them, matters for our determination. While we must frequently decide doubtful questions of law material to proper performance of our administrative duties, we are governed by the principles embodied in specifically applicable decisions of the Pennsylvania courts. Even if we disagree with court declarations of the law, we are not at liberty to embark upon juristic expositions at variance with the court holdings. We consider ourselves bound in this instance by the opinion of the superior court, and we have proceeded accordingly. Again, it is to the court rather than to this Commission that petitioners must address themselves. However, we may note that the superior court has categorically stated in its opinion in these cases that a change in the viewpoint of the Federal Supreme Court does not alter Pennsylvania law on rate matters, and it has been held that neither a city nor its citizens have any right of property protected in rate cases by the Fourteenth Amendment: Scranton v. Public Service Commission (1923) 80 Pa Super Ct 549.

The suggestion that an opportunity should be afforded for presentation of additional evidence is appropriate for our consideration, but we are unable tc agree with the position taken by petitioners. The city of Pittsburgh was an intervener in the proceedings from the start, and from time to time actively participated on the record. Petitioners make much of the Commission criticisms of Peoples' evidence on reproduction cost, but this branch of the argument loses much of its force when it is recalled that the Commission determinations reached in the light of the criticisms were to a large extent carried into effect in the final Commission order.

In addition to the fact that the city of Pittsburgh had full opportunity—which would also have been afforded to the other petitioners had they so desired—to present competent evidence, it should be emphasized that the Commission forum is always open to any consumer—municipal corporation or other—who may desire to file a

complaint against rates and introduce evidence in support of such complaint. This procedure, of course, remains fully available regardless of our action on the petitions before us.

The point raised with reference to our reliance upon information submitted ex parte might well induce us to grant rehearing if the character or accuracy of the data submitted had been in any way controverted. However, we do not understand the petitioners to question the reliability of the figures as to net additions, depreciation reserve increase, and operating revenues and expenses, which figures were taken directly from the utility books and submitted by Peoples in support of its offer of settlement. Rehearing would not, therefore, produce any change in the figures or in our findings based thereon.

In summary, petitioners are asking us (1) to defy the superior court and (2) to provide a new opportunity to introduce evidence which the city failed to present at any of the many hearings held in the cases over a period of several years. The petitions must be dismissed; therefore,

Now, to wit, July 24, 1944, it is *ordered:* That the petitions for rehearing filed by the city of Pittsburgh and Mrs. Katherine Cassidy be and are hereby dismissed.

The chairman being absent did not participate in the vote on this order, Commissioner Buchanan files a dissenting opinion.

BUCHANAN, Commissioner, dissents: The petitions of the city of Pittsburgh, Mrs. Cassidy, and others, for reconsideration and rehearing upon our order of February 16, 1944, 53 PUR(NS) 110, raise some very fundamental constitutional and practical questions. There is no semblance of defiance of the superior court in the petitions now before us that I can find. Rather, there is posed a proper question of mixed law and fact as to how the Commission can accomplish what the court has directed it to do. That I *disagree* with the legality and justness of the superior court opinion of November 10, 1943, 153 Pa Super Ct 475, 51 PUR(NS) 129, 34 A(2d) 375, let there be no doubt.

In its order of March 4, 1942, 43 PUR(NS) 82, as in its order of December 7, 1942, 47 PUR(NS) 385, this Commission, in its conception of justice to all parties and on the advice of its technical staff as to the law and the facts, coupled with its own seasoned judgment and with the supporting opinions of many eminent jurists, declared its belief of the total unreliability and worthlessness of the reproduction cost figures in this record as well as the invariable fallibility of the whole reproduction cost theory for rate-making purposes.

The superior court by its opinion has differed with our order and our staff and in effect has made a finding of fair value approximating $40,000,000 which was based upon reproduction cost less depreciation of the physical plant of Peoples Natural Gas Company, previously rejected by this Commission, and has remanded the record to us to reduce the court's opinion to a formal order. The court finding of fair value doubled that of the Commission.

The Commission could not, and very evidently has not (see our order of February 16, 1944, *supra,* and this

order), changed its opinion as to the evidentiary value of the reproduction cost testimony in this record. That opinion has been expressed too forcibly in the order nisi of March 4, 1942, and in the final order of the Commission, December 7, 1942, to permit of retraction.[1]

[1] Public Utility Commission v. Peoples Nat. Gas Co.—Order Nisi March 4, 1942, 43 PUR (NS) 82, 89:

"The element known as reproduction cost is peculiar, in that it is never factual, but an estimate based upon an hypothesis. Chief Justice Stone has emphasized the delusions and difficulties of reproduction cost, saying: 'In assuming the task of determining judicially the present fair replacement value of the vast properties of public utilities, courts have been projected into the most speculative undertaking imposed upon them in the entire history of English jurisprudence. . . . When we arrive at a theoretical value based upon such uncertain and fugitive data we gain at best only an illusory certainty.' Dissent in West v. Chesapeake & P. Teleph. Co. (1935) 295 US 662, 689, 79 L ed 1640, 8 PUR(NS) 433, 449, 55 S Ct 894." Quoted with approval by the Commission.

"The process of estimating material and labor costs involves taking an inventory of the various items of plant-pipe, pumps, buildings—and applying to them current day costs. The result of such process (in conjunction with depreciation, to be discussed separately) purports to represent the current value of the utility's currently used property. Actually, it does not do so, not only—to mention two reasons among many—because the quantities of material and labor are merely putative, but also because current costs for many items are unobtainable. . . . The difficulties and uncertainties inherent in reproduction costing procedure permit a wide latitude of judgment for the estimator, who therefore, however honest, generally selects those alternatives which do the least harm to his employer. Every regulatory body and appellate court is familiar with the remarkable differences between the reproduction cost figures produced by estimators for contending parties. . . . There are some indications that labor costs used in respondent's estimate do not represent actual experience in the territory; that costs recently experienced by respondent were disregarded (see Clark's Ferry Bridge Co. v. Public Service Commission, 108 Pa Super Ct 49, PUR 1933D 173, 165 Atl 261; [1934] 291 US 227, 78 L ed 767, 2 PUR(NS) 225, 54 S Ct 427); and that further criticism might be directed at other processes; . . . We therefore make no adjustment of respondent's claim of $62,363,418 for materials, labor, and land, but we will weigh its qualitative value in reaching our fair value finding. . . . We have found that, so nearly as can be determined from the record before us, the cost to reproduce respondent's property at December 31, 1938, prices, less accrued depreciation, would be $39,730,207. As has been already related, the weight of this factor is modified by the substitutions and conjectures which the reproduction costing process involves; by the multiplicity of choices open to the estimator; and by the fact that if the property were really to be reproduced, respondent would utilize the most modern equipment and labor-saving methods, the advantages of which would be reflected not only in first cost, but in the expenses of operation as well. A further modifier of this element is the inclusion within it of an amount, undetermined but certainly in excess of $4,000,000, representing property and overheads which have been already charged off against the consumer in operating expenses." 43 PUR(NS) at pp. 89–91, 108.

Final Order December 7, 1942, 47 PUR (NS) 385:

"There is, to our mind, an element of fantasy in the premise that a property can be built brand 'new' today, but also today be worn out to the extent of 27 per cent. Equally difficult to digest is the concept that this 'new' plant has had time to attach business, accumulate losses in its 'earlier years,' and acquire a going concern value of $3,000,000. Yet it is exactly this paradox of a reproduction cost new and an observed 'depreciation' applied to the 'new' but 'going' plant which respondent would have us adopt as our rate base, to the exclusion of every other factor. . . . We have not, either in our order or our thinking, ignored reproduction cost or other opinion figures as respondent alleges. We recognize reproduction cost, when properly determined, as an effort to reflect the impact of economic forces upon that intangible thing called value between the time the property was constructed and the present day. But we must also recognize that the reproduction cost is a very imperfect reflection. No one, not even respondent, contends that it is the number of cash dollars into which the property could be converted if sold in today's market. Nor does anyone, even respondent, contend that if some accident should utterly destroy the property, a new system would be built which would or could exactly match, item for item, type for type, model for model, the present plant; yet such is a basic assumption of reproduction cost. We do not believe that a reproduction cost estimate, standing alone, must be accepted at its face value without inquiry into the processes of its determination; nor do we believe that, standing with other evidences of value, it must nevertheless be given the preponderant weight or, as respondent contends, the sole weight, in fixing fair value. The same is true of any other opinion evidence.

Nor would further hearings for the purpose of supplementing the record with additional testimony as to reproduction cost, as suggested in the petitions of the city of Pittsburgh and Mrs. Cassidy et al., aid the Commission in carrying out the mandate of the superior court, for the very good reason that new evidence of reproduction cost would carry the same odium as the old. Therefore, it is plain that at a rehearing no matter what the nature of new reproduction cost evidence might be, it would add nothing but a new arithmetical sum to the record which would only serve to further confuse the already confounded. I, therefore, agree with the majority as to the inefficacy of further hearings on that subject.

The alternative to this procedure was to return the record to the superior court without change either for the purpose of reargument of the law and the facts and in particular for a further review in the light of the decision of the United States Supreme Court in Federal Power Commission v. Hope Nat. Gas Co. (1944) 320 US 591, 88 L ed 276, 51 PUR(NS) 193, 64 S Ct 281, or, to permit the court to make its own findings as to rate base in the light of its own theories of rate making as was suggested by Judge Rhodes; Peoples Nat. Gas Co. v. Public Utility Commission (1943) 153 Pa Super Ct 475, 509, 51 PUR(NS) 129, 34 A(2d) 375.

The majority has taken a third position that, even though we disagree with the superior court as to the value of reproduction cost evidence and as to whether it is an element of rate making required by the Public Utility Law, nevertheless we exercise a purely mechanical function and we must accept the court determination knowing it to be wrong. They do this without first testing the legality, validity, and reasonableness of the opinion of the superior court.

The majority has chosen the third path and I follow the second. If my method is "to defy the superior court" as the majority and respondent's brief apparently seeks to fasten upon the petitioners, I emphatically disagree for both petitioners and myself. This Commission is an arm of the legislature and is an advesary in this proceeding in protection of the public interest. If there are no facts, we should say so. We should not supinely acquiesce in something which we have disapproved and know

. . . In contrast, to the reproduction cost and its complete dependence upon hypothesis, there are other elements of value in this record which are not only factual in themselves, but tend to support each other. . . . Respondent here insists that opinion testimony by Rhodes, the quality of whose evidence has already been assayed, shall be accepted in contradiction to a fact of very common knowledge; namely, that property *appears* to depreciate at a progressively more rapid rate. (We concluded that, taking into account both realized and potential depreciation, the rate was approximately uniform.) Respondent, relying upon Rhodes' testimony at one point on the matter of *accrued* depreciation, says its property depreciates at a decelerating rate. In very interesting contrast, the same witness, testifying on annual depreciation, asked for *higher allowances for the future* than any annual rate that could be calculated by any formula to produce his accrued depreciation figures (see discussion of annual depreciation in Part III of order nisi). That is to say, when Rhodes is dealing with accrued depreciation, for which a low figure is desirable from respondent's viewpoint, he thinks the rate of depreciation decelerates; when he is dealing with annual depreciation, for which respondent wants a high allowance, he thinks the rate accelerates. Here, as elsewhere, witness Rhodes' testimony lacks that integrity within itself which is a prime requisite to acceptance and belief." 47 PUR(NS) at pp. 389, 390. 396.

to be wrong and *upon which we have not changed our opinions.* Using the language of the court, we should not pay "lip service" to our convictions. To do so is not proper protection of the public interest. If, before exhausting constitutional due process, to disagree with court declarations of law which are at variance with other and superior jurisdictions is "defiance" of that court, then for certain have we ceased to be a government of laws and have become a government of men.

What is the basis for the opinion of the superior court as to the evidentiary value of reproduction cost? It either has its foundation in statute law or it is derived from the Federal or state Constitutions. So far as the Federal Constitution is concerned, the second premise is forthwith ruled out by the United States Supreme Court decision in Federal Power Commission v. Hope Nat. Gas Co. *supra.* Likewise, it is inconceivable that there can be two different standards for substantive due process, one Federal and one state; so the second premise falls for complete lack of constitutional support. If the first premise holds true, either statute or case law must support the court's opinion. Let us look at the record.

The element of reproduction cost in rate making is the result of judicial legislation and not of statutory law. The *dominance* of reproduction cost, in rate making, without question, matured with McCardle v. Indianapolis Water Co. 272 US 400, 71 L ed 316, PUR1927A 15, 47 S Ct 144, and not with Smyth v. Ames (1898) 169 US 466, 42 L ed 819, 18 S Ct 418. The latter laid down no hard and fast rule requiring the "present value" concept contained in the former. Rather *the dominance of reproduction cost was the result of the evolution of judicial thinking between 1898 and 1926.* That is why the Public Service Company Law (Act of July 26, 1913, P. L. 1374) contained no *must* formula for determining a fair value of utility property and particularly it did not compel the dominant consideration of *reproduction cost because it was not intended to be dominant. Section 20 is couched in language which leaves entirely within the discretion of the Commission as to the method of determining a fair value and* likewise the option *whether the fair value of the property or some other base should be used for purposes of the act.* The legislative intent is clear that the rate-making formula should follow equitable principles.

How then did the reproduction cost interpretation creep into Pennsylvania law? The answer is clear and indisputable that it was *read into our law by the state courts* in a judicial recognition of Federal decisions.

In Pennsylvania this judicial accord between state and Federal rate decisions began with Ohio Valley Water Co. v. Ben Avon, 253 US 287, 64 L ed 908, PUR1920E 814, 40 S Ct 527, where the United States Supreme Court wrote into Pennsylvania law the doctrine of "independent judicial review" in the exercise of the police power of the state. This doctrine in turn, through the judicial courtesy then existing or otherwise, compelled the application of principles enunciated in Federal caess to state rate making under the Public Service Company Law. There-

after the Federal theory of rate making became recognized in Pennsylvania not by legislative enactment but by *a judicial declaration which was contrary to our Act of Assembly.* Then, if ever, was the time for the proper assertion of the so-called States Rights doctrine.

So beginning with 1920 the budding reproduction cost principle of the McCardle Case, *supra,* became judicially impressed upon our state law and, indeed, *in time was judicially accepted,* wrongfully of course, *as the legislative intent* of our Public Service Company Law. At all times the state courts followed the Federal court decisions, not once, after Ohio Valley Water Co. v. Ben Avon, *supra,* did they attempt to distinguish our Public Service Company Law from Federal judicial decision, rather the effort was to relate and make subservient that law to the Federal constitutional interpretations of 1926. What a radical departure from that attitude prevails now. A severance has apparently taken place in the judicial accord but nevertheless with the accomplishment of the common objective then and now.

In 1937, again following the lead of the Federal jurisdiction but *legislatively this time,* the Pennsylvania general assembly, under the aegis of the "Little New Deal" met to remedy the effect of judicial legislation and to wipe from the statute books any semblance of a rate-making formula. It met to give to the Commission full discretion to apply to each case such rate base as the special circumstances should require, which the courts had denied heretofore. So was born the Public Utility Law (Act of May 28, 1937, P. L. 1053). That the influence of the Federal "New Deal" was present is beyond dispute. House Minority Leader, Elwood Turner, on May 17, 1937 at page 4521 of Legislative Journal acknowledged the fact. While the actual drafting of the act was conducted by lawyers in the state employ, the final stamp of approval was placed upon the draft by legal representatives of various Federal Commissions and particularly the Rural Electricfication Administration and Federal Power Commission. Those are historical facts commonly known which knowledge must be imputed to the state courts.

Not only was a change in the intent of the law, as judicially construed, to be presumed from the background of its drafting and the liberal thought engaged therein, but likewise in the variance of the phrasing of the 1937 act from the 1913 act must be recognized. The necessity for and the method of determining a fair value of utility property under § 311 of the Public Utility Law is still discretionary with the Commission as it was in the Public Service Company Law but any requirement that fair value shall be used or that particular elements, especially that of "reproduction cost," should dominate in rate making are notable by their absence. That absence emphasized the discretion intended to be exercised by the Commission. But the court says that the legislature was presumed to act in the light of the recognized judicial opinions: Aside from this assumption of judicial legislation and the fact that the McCardle doctrine was inconsistently applied in the judicial decisions, the record continues.

When the Public Utility Law was under consideration by the respective houses of the legislature, it was constantly referred to as a "liberal law." The principal object of liberalization in the public utility world, both Federal and state, at that time was to relax the tight chains of judicial opinion binding the rate-making process which required emphasis upon and consideration of reproduction cost or "present value" of utility property which was, in brief, an engineering estimate of present day costs of the utility plant as it was installed years ago. So the primary object of the 1937 legislature was to remove the festering sore of excessive utility rates; to remove inflation from the books of utilities and to permit a fair return on actual legitimate investment costs, the very opposite of that which the court asserts. This could only be accomplished through the removal of the judicial requirement of the engineering estimate of "present value."

That the legislature intended this objective to have been accomplished by the new Public Utility Law, and that the judicial "fair value" or "reproduction cost" concept was intended to be forever buried by the new enactment is conclusively determined by the remarks of Mr. Achterman, Chairman of the House Committee on Public Utilities at the time of final passage of the new act. Solar Electric Co. v. Public Utility Commission (1939) 137 Pa Super Ct 325, 31 PUR(NS) 275, 9 A(2d) 447, to the contrary notwithstanding:

"He has shown an extraordinary interest in the people of Pennsylvania, but I say to you that our interest is larger and broader than the interest he has demonstrated here this evening in that we desire to see that the people of Pennsylvania receive a fair rate from their public service utilities, and that rate as provided by this bill will be fair to the investors, will be of necessity fair to the employees of the utilities, and above all will be fair to the users of the respective public utilities. The bill provides for a return on the capital invested in the assets of the corporation, not a fanciful one, not a conjured one, but a real and actual value. It is on that basis that we are expecting the Public Utilities Commission to fix the rates of the various utilities in this state. I am saying quite frankly to the members of this House that it is our hope that it is going to protect the entire populace of our state, and not handing to just a few who might be the owners of utility stock an advantage far in excess of that to which they are entitled."* Mr. Achterman, Legislative Journal, Vol. 21, No. 59, page 4522, Monday May 17, 1937, speaking on Final Passage of Act No. 851.

The similarity between the rate-making sections of the Pennsylvania Public Utility Law and the Federal Power Act is not mere coincidence. Both were designed and deliberately conceived in the common objective to get rid of rigid rate-making formulae and to permit the circumstances of each case to govern in determining what might be just and reasonable rates.

The entire Public Utility Law was built upon the sound objectives of simplifying and expediting the methods of determining just and reasonable rates and service. Then can it be presumed that the legislature in § 310

wilfully wrote into it a provision for determining temporary rates on an original-cost-less-depreciation basis, only to later increase such temporary rates to the higher rates invariably resulting from the inflation caused by reproduction cost estimates? What is the purpose of the provisions for cost accounting except for rate-making purposes on an *actual cost basis?* Why both constitutional and statutory protection of security issues from inflation? Reproduction cost is nothing more or less than the very inflation that the entire act and regulatory process is designed to protect against. A perpetuation of that inflation by judicial decree in the face of an obviously adverse legislative intent is to destroy the whole constitutional structure of our state government.

This Commission is frequently required to approve or disapprove the capitalization of public utility corporations reorganized under the Federal Bankruptcy Act. The basis of such reorganizations is the capitalization of earnings since it was a deficiency of earning power that necessitated the reorganization. Can it be said that having reorganized on the basis of capitalizing earning power that thereafter this Commission should fix rates on a reproduction cost basis which would require to be done the very thing which theretofore could not be done, i. e., increase the earning power? The legislature was presumed to have acted with wisdom and I have neither seen nor read anything to indicate the contrary except what the superior court has said in this case. Justice Stone speaking for the United States Supreme Court said:

"This restriction upon the judicial function, in passing on the constitutionality of statutes, is not artificial or irrational. A state legislature, in the enactment of laws, has the widest possible latitude within the limits of the Constitution. In the nature of the case it cannot record a complete catalogue of the considerations which move its members to enact laws. In the absence of such a record courts cannot assume that its action is capricious, or that, with its informed acquaintance with local conditions to which the legislation is to be applied, it was not aware of facts which afford reasonable basis for its action. Only by faithful adherence to this guiding principle of judicial review of legislation is it possible to preserve to the legislative branch its rightful independence and its ability to function." Carmichael v. Southern Coal & Coke Co. (1937) 301 US 495, 510, 81 L ed 1245, 1253, 57 S Ct 868, 109 ALR 1327. Justices Sutherland, McReynolds, Van Devanter, and Butler dissenting.

But the court in its November 10, 1943 opinion, 153 Pa Super Ct 475, 51 PUR(NS) 129, 34 A(2d) 375, is in error in construing § 311 of the Public Utility Law as the section governing rate making. To read a restriction upon rate making or a mandatory rate-making formula into § 311 requires an insight of verbal interpretation too finespun for any but the judiciary. Section 301 governs rate making under the Pennsylvania Act. The statute says "all rates shall be just and reasonable" no more and no less. The Constitution says that they shall not be confiscatory. Whether they do actually confiscate the property or are unjust and unreasonable

are questions of fact and not of law, and no formula is required to gauge those facts. Federal Power Commission v. Hope Nat. Gas Co. *supra.*

During the passage of the Public Utility Law in 1937, for advice to and the guidance of the legislature in enacting the new code into law, this Commission conducted hearings thereon at which all parties were given an opportunity to be heard. The utilities objected strenuously to the new law. Mr. Turner (*supra*) states that he complained about the changes to the superior court. He objected to the law because it *did change* the previous law. The utilities objected to it because it *did change* the law. *And it did effect a drastic change not only in form but likewise in substance*—that was the reason for the objections. The entire code is built around two fundamentals—*rates and service in the public interest.* The rates were not to be the "fanciful" and "conjured" rates of the past but were to be based on "a real and actual value." No court can honestly hold that reproduction cost, either as a matter of fact or of law, is synonymous at any time with "a real and actual value."

To determine a "just and reasonable rate" is to apply equitable principles to each respective case. Equity will do justice to both consumer and investor. But equity will not permit of any estimates or "kiting" of actual investment dollars to satisfy the insatiable greed of monopolistic management. This Commission having jurisdiction over the regulation of rates is presumed to do so in the public interest. Reproduction cost reverses this presumption such that the public utility regulates the rates through a self-serving formula.

The court in its November 10, 1943 opinion, *supra,* has raised the banner of "states rights." Since 1836 that standard whenever and wherever raised has, without exception, stood for greed, lust, and special privilege. It has no place here. The reproduction cost theory became a part of our law by court translation from Federal jurisdiction. There was no waving of the banners of "states rights" at that time although the corporate monopoly profited and was enriched thereby. *Why then should it be raised now when the Federal jurisdiction has retracted its grant of special corporate privilege for the nation as a whole, including Pennsylvania, except where restrained by the belated assertion of "states rights" in Pennsylvania courts.*

Do the Federal and state courts recognize different standards of substantive due process, one for the corporation and another for the individual? Certainly the Federal jurisdiction does not do so. (Federal Power Commission v. Hope Nat. Gas Co. *supra*). Does not the change from yesterday's Federal standard of confiscation of corporate property to today's standard leave a difference in dollars that if not returned to the ratepayer will result in confiscation of the ratepayers' dollar today as it was alleged to have done to the public utility dollar yesterday? Can it be said that what has been excluded in the Federal jurisdiction as an unjust and unreasonable exaction by the public utility under the standards of the Federal Constitution be just and reasonable under Pennsylvania standards? If they are unjust and unreasonable and, there-

fore, confiscatory under the Federal Constitution they must be so in Pennsylvania as it is the inferior jurisdiction. That is what Mrs. Cassidy claims as I understand her petition and I agree with her. If under identical facts and rate-making methods, rates in one case (Federal Power Commission v. Hope Nat. Gas Co. *supra*) are not confiscatory under the Federal statute but in another case (Peoples Nat. Gas Co. v. Public Utility Commission, *supra*) the same rates are confiscatory of the public utility property under the Pennsylvania statute, identical in wording to the Federal statute, certainly Mrs. Cassidy and other petitioners can be protected from such inconsistency under the Federal Constitution, at least. In the Peoples Case there is an unjust taking judicially of Mrs. Cassidy's property for which a remedy lies in the Federal courts.

Finally we come to a consideration of our state Constitution. If, as the court asserted, the Public Utility Law and court decisions require public utility rates to be fixed on a reproduction cost base, then both the law and the decisions are unconstitutional under Art XVI, § 3 of the Pennsylvania Constitution which prohibits the abridging and construing of the police power of the state "so as to permit corporations to conduct their business in such manner as to infringe the *equal rights of individuals or the general well being of the state*" (Italics supplied). If the Public Utility Law is to be construed by the courts to permit the fixing of corporate utility rates on an estimate of value based on conjecture, false assumptions and fantasy then beyond any doubt those rates extend a preference to the corporation and the investor over the individual ratepayer and the Public Utility Law must fall. But the expressed objective of that law (House Legislature Journal, p. 4522, *supra*) *was to prohibit and prevent that very thing. It is the court construction which is subject to the constitutional prohibition not the Public Utility Law.* Mrs. Cassidy and other petitioning ratepayers are entitled to rights at least equal to the rights of the corporation and corporate investor, and cannot be subjected to unreasonable rates either by legislative or judicial fiat under the Constitution.

Concrete illustration of the delaying influence and injustice of judicial rate-making exemplified by the reproduction cost rate base theory is to be found in this record. On October 15, 1944 there will have been consumed seven and one-half years in the trial and determination of this case. Of that time, six and one-half years can be ascribed directly to the determination of the fanciful juristic logomachy known as reproduction cost. The record of the first day's hearing on October 15, 1937, plus six months for findings of fact and conclusions of law, gave a sufficient basis for a fair and just determination of reasonable rates on actual cost and actual investment which are the basis of competitive private industrial prices as well as public utility rates in 24 states and in the Federal jurisdiction. The remaining six and one-half years were spent in a wasteful and inordinately expensive engineering investigation and analyses with the result as found in our orders of March 4, 1942, 43

PUR(NS) 82, and December 7, 1942, 47 PUR(NS) 385, and in the resulting court controversy.

This protection to public utilities provided, consciously or unconsciously, by the courts is more responsible for the mulcting of the ratepayers than the utilities themselves. With the hands off policy of Federal courts, except where actual confiscation takes place, Federal Power Commission has been able to bring order out of chaos into the national utility field and with complete equity to both investor and ratepayer. It is only in those jurisdictions where corporate privilege is still paramount that the utility profits at the expense of the ratepayer.

In summary:

1. Further hearings could develop no further evidence upon the issue except a new reproduction cost figure which would be equally unreliable as that in the present record.

2. The "fair value" definition of the superior court sprang from the Federal jurisdiction and was adopted by the state courts not by the state legislature and has resulted in inflated public utility rates.

3. The former fair value definition has been fully and thoroughly repudiated by the Federal Supreme Court which spawned it. This repudiation was in recognition of the great injustice which it effected upon ratepayers. The assertion now of a states rights policy in Pennsylvania in furtherance of that injustice is absurd.

4. The assertion of the dominance of reproduction cost in rate making either under the Public Utility Law or under court decision violates Art XVI, § 3 of the Pennsylvania Constitution as abridging and construing the police power to prefer corporate rights over individual rights.

5. The law as it is construed by the Pennsylvania superior court violates the Fifth and Fourteenth Amendments to the Federal Constitution in that it denies equal protection of property to Mrs. Cassidy and other ratepayers.

6. I would grant the petitions of the city of Pittsburgh, Mrs. Cassidy, et al., for reconsideration of our order of February 16, 1944, 53 PUR(NS) 110, and would then revise it to accord with the law of Federal Power Commission v. Hope Nat. Gas Co. *supra,* and the facts found in the Commission order of December 7, 1942, *supra,* in this case.

In founding Pennsylvania, William Penn expounded his philosophy of government:

"Where any government is free to the people, where the laws rule and the people are a party to those laws and more than this is tyranny, oligarchy, and confusion." Paraphrasing Winston Churchill the issue here is whether we shall sit in at the burial of William Penn's philosophy.

MISSOURI PUBLIC SERVICE COMMISSION

Re General Order No. 38-A Relating to Depreciation Reserve Fund

August 14, 1944

PROCEEDING *relating to crediting to depreciation reserve fund the income thereon, with resulting reduction in annual charges to operating income; general order promulgated.*

Depreciation, § 41 — Reserve fund — Income credit.

1. Gas, electric, water, telephone, telegraph, and heating utilities must, unless good cause can be shown to the contrary, credit to, and carry in, their respective depreciation reserve funds the income thereon and reduce the annual charges to operating income for depreciation by the amount of such income, pursuant to § 5656, Rev Stats Mo 1939 and § 5680, Rev Stats Mo 1939, p. 228.

Depreciation, § 41 — Reserve fund — Statement as to income.

2. Public utilities, required by statute and general order of the Commission to credit to, and carry in, their respective depreciation reserve funds the income thereon and to reduce the annual charges to operating income for depreciation by the amount of such income, were required to file sworn statements showing income derived from such funds and to file copies of balance sheets and income statements, p. 228.

(WILSON, Commissioner, dissents.)

By the COMMISSION:

General Order No. 38-A Promulgated in Lieu of General Order No. 38

On July 17, 1944, the Commission issued its General Order No. 38 effective in thirty days directed to all gas, electric, water, telegraph, telephone, and heating utilities operating within the state of Missouri with respect to the depreciation reserve fund of each said utility. Prior to the effective date of the order, a large number of the utilities requested a conference with the Commission in order to present their views regarding said General Order No. 38. The Commission granted the utilities a conference on August 11 and 14, 1944, at which time several representatives appearing on behalf of a large number of the utilities appeared and presented certain objections to General Order No. 38 as written, and also requested that the effective date of the order be extended in order to give them more time for study and determination.

The Commission, after hearing the representatives of these various utilities, and in order to give said utilities additional time and eliminate certain objections raised to said General Or-

der No. 38, and to clarify the same, is therefore of the opinion that General Order No. 38 should be and the same is hereby repealed and set aside, and this General Order No. 38-A is hereby promulgated in lieu thereof and shall in all respects replace said General Order No. 38.

[1, 2] As stated in General Order No. 38, it appears to the Commission from annual reports and studies made by its staff that the gas, electric, and water utilities operating in the state of Missouri are not fully complying with the provisions of § 5656, Rev Stats Mo 1939, in that the income from the investments of moneys in their depreciation reserve fund which pertains to property in Missouri is not being credited to and carried in such fund and that telegraph, telephone, and heating utilities operating in the state of Missouri are not fully complying with the provisions of § 5680 Rev Stats Mo 1939, in that the income from the investments of moneys in their depreciation reserve fund which pertains to property in Missouri is not being credited to and carried in such fund. The Commission is therefore of the opinion that unless good cause can be shown to the contrary, it should order all gas, electric, water, telegraph, telephone, and heating utilities operating in the state of Missouri to commence on January 1, 1945, to credit to and carry in the respective depreciation reserve fund of each the income thereon and to reduce the annual charges to operating income for depreciation by the amount of such income.

Based upon studies made by the Commission's staff and all other information now available to the Commission, we are of the opinion at this time that the utilities have their depreciation reserve funds invested in plant, securities, or other properties and are deriving income from said investments and should credit to, and carry in, the depreciation reserve fund the actual income thereon, and that unless good cause be shown that such is not the fact, each and every such utility operating in the state of Missouri will be ordered to credit said income to, and carry it in, the depreciation reserve fund and to reduce the annual charges to operating income accordingly. In order that the Commission may verify the income derived from the depreciation reserve funds, each telephone, telegraph, heating, gas, electric, and water utility operating in Missouri should file a sworn statement showing the income derived from its depreciation reserve funds for the year ended July 31, 1944, and should file with said sworn statement a copy of its balance sheet as of July 31, 1944, and an income statement showing its income from all sources for the year ended July 31, 1944, and it will be so *ordered.*

The Commission is further advised that the proper and adequate rates of depreciation of the Missouri properties of all such utilities have not in some instances been fixed by the Commission as provided in the said §§ 5656 and 5680, Rev Stats Mo 1939, it is therefore,

Ordered: 1. That each telephone, telegraph, heating, gas, electric and water utility operating in the state of Missouri be and is hereby ordered to file with the Commission on or before October 2, 1944, statements showing the income derived from its depreciation reserve funds for the year ending July 31, 1944, and to file a copy of its bal-

ance sheet as of that date and an income statement showing the income derived by its from all sources for the year ended July 31, 1944. The statements herein ordered to be filed shall bear the signature of the responsible officer and shall be verified by the oath of said officer.

Ordered: 2. That unless an appropriate pleading or application to show good cause to the contrary be filed with the Commission on or before October 2, 1944, then on and after January 1, 1945, each and every gas, electric, and water utility operating in the state of Missouri, not so pleading or applying, shall credit its respective depreciation reserve fund pertaining to property in the state of Missouri with the income derived from the investment of moneys in such funds and that the annual charges to operating income for depreciation of each such utility shall be reduced by the amount of said income. If such appropriate pleading or application shall be so filed, then the issues raised thereby will be set down for hearing before this Commission on proper notice.

Ordered: 3. That unless an appropriate pleading or application to show good cause to the contrary be filed with the Commission on or before October 2, 1944, then on and after January 1, 1945, each and every telegraph, telephone, and heating utility operating in the state of Missouri, not so pleading or applying, shall credit its respective depreciation reserve fund pertaining to property in the state of Missouri with the income derived from the investment of moneys in such funds and that the annual charges to operating income for depreciation of each such utility shall be reduced by the amount of said income. If such appropriate pleading or application shall be so filed, then the issues raised thereby will be set down for hearing before this Commission on proper notice.

Ordered: 4. That unless an appropriate pleading or application to show good cause to the contrary be filed with the Commission on or before October 2, 1944, then from and after the effective date of this order, each gas, electric, water, telegraph, telephone, and heating utility operating in the state of Missouri shall set aside moneys and accrue same to their respective depreciation fund at the annual rate now being used for such accruals by each respective utility either pursuant to order of this Commission heretobefore made or in the case of utilities where such order has not been made, the rate now in use by order of the management of the said utility and which said management obviously deems to be sufficient, and such rates for depreciation shall be continued by each respective utility unless and until good cause be shown why another and different rate should be used. If such appropriate pleading or application shall be so filed, then the issues raised thereby will be set down for a hearing before this Commission on proper notice.

Ordered: 5. That General Order No. 38 of this Commission heretofore issued on the 17th day of July, 1944, be and the same is hereby set aside and in all respects repealed and this General Order No. 38-A is hereby promulgated in lieu thereof and shall in all respects replace said General Order No. 38.

Ordered: 6. That this order take

effect on and after October 2, 1944, and that the secretary of the Commission shall forthwith serve a copy of this order on all parties interested herein, and that said interested parties be required to notify the Commission before the effective date of this order, in the manner required by § 5601, Rev Stats Mo 1939, whether the terms of this order are accepted and will be obeyed.

WILSON, Commissioner, dissenting: I cannot concur in General Order No. 38-A. In my opinion it does not correct the defects which I thought were present in General Order No. 38, to which I dissented. Hence, I am compelled to dissent from this order for the reason I have previously stated. Furthermore, I am not satisfied that General Order No. 38-A adequately meets the objections urged by the utilities at the conferences mentioned in this order.

As I view this matter, after careful consideration of the facts and arguments presented at these conferences, both orders involve such a radical and far-reaching departure from the long-established policy of the Commission and practices in the industry that a thorough preliminary investigation should be made of the general policy involved, with full opportunity to be heard afforded to all utilities to be affected, to the end that any general order that the Commission may make shall be based upon the facts and conditions in the industry; and it is my judgment that this should be done before any effort is made to settle these questions with respect to the individual utilities.

CALIFORNIA RAILROAD COMMISSION

Re Southern Counties Gas Company

Decision No. 36984, Application No. 25773
April 11, 1944

APPLICATION *for authority to exercise a gas franchise; authority granted.*

Accounting, § 23 — Franchise payments.

A gas utility which had been using city streets prior to acquisition of a valid franchise and charging payment for such use to operating expenses should, upon securing a valid franchise, charge such prior payments to Profit and Loss, Account 507, "Delayed Income Debits."

APPEARANCES: LeRoy M. Edwards, Attorney, for applicant; M. A. Fitzgerald, City Attorney of San Luis Obispo.

HAVENNER, Commissioner: Southern Counties Gas Company of California asks the Commission to make its order that public convenience and

necessity require and will require the exercise by applicant of the rights and privileges granted to it by the city of San Luis Obispo under Franchise Order No. 247 (N.S.), adopted July 19, 1943. The franchise is granted under the Franchise Act of 1937 for a term of thirty-five years.

The testimony shows that on or about April 12, 1915, the city of San Luis Obispo granted a franchise known as Ordinance No. 43 (N.S.) to Santa Maria Gas and Power Company to furnish and sell to the city of San Luis Obispo and the inhabitants thereof, natural and artificial gas for light, heat, fuel, power, and such other purposes as the same can or may be utilized, and for the transportation and delivery of the same, to construct, repair, and maintain pipe lines over, across, under, and along the public streets, roads, and highways of the city of San Luis Obispo.

On or about June 23, 1920, the properties of the Santa Maria Gas and Power Company were sold to Santa Maria Gas Company. Included in such properties was Franchise Order No. 43 (N.S.). This franchise was granted subject to all provisions of the charter of the city of San Luis Obispo. A charter provision (§ 98) provides that a franchise shall not be leased, assigned or otherwise alienated without the express consent of the city and no dealings with the lessee or assignee on the part of the city to require the performance of any acts or payments of any compensation by the lessee or assignee shall be deemed to operate as such consent. Though the consent of the city of San Luis Obispo was never obtained for the transfer of the franchise, Santa Maria Gas Company apparently proceeded on the theory that it had acquired a valid franchise. In any event, it distributed and sold gas in the city of San Luis Obispo from 1920 to November 1, 1941, when it was merged into Southern Counties Gas Company of California. From 1920 to January 31, 1941, it made annual payments to the city of San Luis Obispo as though it possessed a valid franchise. It is now admitted that the Santa Maria Gas Company had no city of San Luis Obispo franchise.

In 1937, the Santa Maria Gas Company applied for a franchise under the Franchise Act of 1937 but the city council of the city of San Luis Obispo refused to grant it a franchise. On November 5, 1941, applicant filed an application for a franchise which it withdrew because the mayor demanded that applicant pay a 2 per cent franchise fee from January 31, 1941. On January 28, 1943, applicant filed a new application for a franchise. On March 1, 1943, the city council of the city of San Luis Obispo adopted a resolution, No. 688 (N.S.), submitting to the electors the matter of voting upon the grant of a franchise to applicant. At the general municipal election held on April 5, 1943, 1,117 votes were cast in favor of granting applicant a franchise similar to that appearing on the ballot while 347 votes were cast against the granting of the franchise. On July 1, 1943, the city council of the city of San Luis Obispo adopted said Ordinance No. 247 (N.S.).

The testimony shows that on August 18, 1943, applicant gave to the city of San Luis Obispo its checks in

the following amounts and for the following purposes:

Exhibit "P"—check for $5,000 in payment for amount incorporated in franchise ordinance.

Exhibit "Q"—check for $2,149.05 in payment of 1 per cent of revenue from November 1, 1941, to December 31, 1942.

Exhibit "R"—check for $151.05 to reimburse the city for advertising franchise.

Exhibit "S"—check for $1,222.08 for final payment under Ordinance No. 43 (N.S.) for period February 1, 1941, to October 31, 1941.

The last-named check had at the time of the hearing not been cashed by the city. The testimony shows that the amounts represented by Exhibits "Q" and "S" aggregating $3,371.13 were by applicant charged to operating expenses. In view of the fact that these payments were for the use of streets prior to 1943, the amount of $3,371.13 should be charged to Profit and Loss, Account 507, "Delayed Income Debits."

The record shows that the $5,000 payment was an amount demanded by the city of San Luis Obispo as a consideration for the granting of Franchise Ordinance No. 247 (N.S.). There is nothing in the record to indicate that it was a payment in the way of a settlement for past use of city streets. However, this Commission has authority to direct applicant to dispose of this payment in its financial records in such a manner that it will not impose an inequitable burden upon ratepayers who reside outside of the city of San Luis Obispo. When the rates of applicant are reviewed by this Commission at some future date, appropriate consideration will be given to the said $5,000 franchise payment.

The franchise requires applicant to pay annually to the city of San Luis Obispo, a sum which shall be equivalent to 2 per cent of the gross annual receipts of applicant arising from the use, operation or possession of the franchise, provided, however, that such payment shall in no event be less than one per cent of the gross annual receipts of applicant derived from the sale of gas within the limits of the city of San Luis Obispo under the franchise. Except for the $5,000 payment, the franchise contains no unusual provisions.

In Exhibit "K," applicant stipulates and declares in consideration of the granting to it of the certificate of public convenience and necessity mentioned herein that neither Southern Counties Gas Company of California nor its successors or assigns will ever claim before the Railroad Commission of the state of California or any other court or public body, a value for said franchise in excess of the actual cost thereof which actual cost is reported at $5,201.05.

No one appeared at the hearing to protest the granting of this application.

UNITED STATES DISTRICT COURT, D. DELAWARE

Re American Gas & Power Company

Civ A No. 419
55 F Supp 756
June 6, 1944

APPLICATION *of Securities and Exchange Commission pursuant to § 11 (e) of the Holding Company Act to approve a plan as fair, equitable, and appropriate to effectuate provisions of § 11(b) of the act; application granted.*

Security issues, § 3 — Constitutional limitations — Holding Company Act — Simplification plan — Contract rights.

1. The Holding Company Act does not violate the provisions of the Fifth Amendment of the Constitution by impairing a property right fixed by contract although, under a plan of simplification to comply with § 11(b)(2) of the act, 15 USCA § 79k(b)(2), new provisions are substituted in a trust indenture for the release of collateral described in a debenture agreement, since contractual relationships must necessarily give slightly in the face of such legislation, p. 236.

Intercorporate relations, § 19.3 — Holding company simplification — Powers of Commission and court.

2. Section 26 of the Holding Company Act, 15 USCA § 79z, dealing with the validity of rights of creditors, does not limit either the power of the Commission or of a court to modify such rights as an incidence as to what is a fair and equitable plan for simplification under § 11 of the act, 15 USCA § 79k, p. 236.

Intercorporate relations, § 19.81 — Holding company simplification — Judicial enforcement of plan.

3. The only question for the district court in a case where Congress has provided for modification of contract rights as an incident to corporate simplification under the Holding Company Act, in a proceeding to enforce a simplification plan, is whether the particular contract alterations are fair and equitable to those affected thereby, p. 236.

Security issues, § 2.1 — Modification of debenture agreement — Plan under Holding Company Act.

4. A plan submitted pursuant to § 11(e) of the Holding Company Act, 15 USCA § 79k(e), to effectuate the provisions of § 11(b), providing for modification of a debenture agreement with respect to substitution of new provisions for the release of collateral, was held to be fair and equitable to the persons affected thereby, and Commission approval of the plan was held not to prejudice any constitutional or legal right of either the trustee or of any debenture holder to object to any future order affecting the lien of the debenture agreement on the remaining collateral or on the proceeds from the sale of such, or which might provide for a distribution of the proceeds of any such sale in any manner other than the deposit thereof with the trustee, p. 236.

APPEARANCES: David K. Kadane and Myron S. Issacs, both of Philadelphia, Pa. for the SEC; C. A. Southerland (of Southerland, Berl & Potter), of Wilmington, Del., and Prescott Andrews, of New York city, for American Gas & Power Co.; Charles F. Richards (of Richards, Layton & Finger) of Wilmington, Del., and Melber Chambers (of Sage, Gray, Todd & Sims), of New York city, for New York Trust Co., trustee.

LEAHY, DJ.: This matter is here on an application of the Securities and Exchange Commission pursuant to § 11(e) of the Public Utility Holding Company Act of 1935, 15 USCA § 79k(e), to approve a certain plan of American Gas and Power Company as fair, equitable, and appropriate to effectuate the provisions of § 11 (b) of the act. At the hearing, both the corporation and the Commission supported the plan. The sole objection to the plan will be discussed shortly.

After hearing and an examination of the facts and the law, the court makes the following findings of fact: 1. American Gas and Power Company (herein called "American") is a Delaware corporation, an inhabitant of that state within the meaning of § 25 of the Public Utility Holding Company Act of 1935, 49 Stat 803, 15 USCA § 79 et seq., and is a registered holding company.

2. Community Gas and Power Company (herein called "Community") is a Delaware corporation, an inhabitant of that state, and is a registered holding company. American is a subsidiary of Community.

3. American Utilities Associates (herein called "Associates") is a Massachusetts trust. All of its securities are owned by American, and it is a subsidiary of American and Community. Associates' assets consist mainly of 58,861.6 shares (96.55 per cent) of the outstanding capital stock, and $1,997 unpaid face amount (1.1 per cent) of the serial noninterest bearing obligations of Lowell Gas Light Company (herein called "Lowell"), which is a Massachusetts corporation and a gas utility company and is a subsidiary of Associates, American and Community.

4. In addition to Associates and Lowell the holding company system of Community and American includes six subsidiary companies of which five are gas utility companies operating in Minnesota, Alabama, Georgia, Florida, and Maine. The sixth is a management company all of whose expenses are paid by American.

5. American's interests in Associates consist of $5,910,000 principal amount of notes of which a note in the amount of $4,950,000 is secured by a pledge of 58,199 shares of capital stock of Lowell. As of September 30, 1943, accrued unpaid interest on this obligation amounted to $3,866,475. American has an accounts receivable item from Associates in the amount of $110,065. The $4,950,000 note of Associates, together with the 58,199 shares of Lowell stock, have been pledged by American with the New York Trust Company (herein called "trustee") as successor trustee under a debenture agreement of American and several supplements thereto.

6. On July 2, 1943, the Commis-

sion directed American, pursuant to § 11(b)(1) of the act, to dispose of its entire interest in Associates, as well as in all its other subsidiaries, except Minneapolis Gas Light Company. Under the order American was directed, pursuant ot § 11(b)(2) of the act, to change its capital structure—consisting of secured debentures and common stock—into a capital structure consisting of one class of stock, i.e., common stock. No appeal was taken from the order under § 24(a), 15 USCA § 79x(a) and the time for appeal has expired. American and Community have filed a plan under § 11(e) with the Commission. Certain amendments have been added. American is to dispose of its interests in all of its subsidiaries (with the exception of Minneapolis Gas Light Company) to be followed by a reorganization of American whereby it will have one class of stock—common stock—resulting in an ultimate merger of Minneapolis Gas Light Company with American. The Commission has not approved any of the transactions except one part thereof. It has approved the sale by American of its interests in Associates and Lowell. This calls for a modification of the debenture agreement securing American's outstanding debentures. This will take the form of a supplemental agreement.[1] This is the "Plan" before the court.

7. American security holders were notified of the public hearing held by the Commission on the plan. Counsel for the committee representing holders of the secured debentures of American, for Minneapolis Gas Light Company, and for certain security holders of Community, had appeared at prior hearings and had received notice of the hearing on the plan held November 29, 1943. But they did not appear at that hearing. No other person appeared or sought leave to intervene or to be heard. Alpha Association a Massachusetts trust, and a stranger to the American system has agreed to purchase American's interests in Associates and Lowell. In approving this acquisition the Commis-

[1] A new provision is to be added to the debenture agreement, as amended, to be known as § 7(b), which will provide as follows:

"Section 7(b). The trustee shall release from the lien of the Debenture Agreement and Supplemental Agreements and shall deliver to the company at any time or from time to time all or any part of the securities of and interest in Birmingham Gas Company, Savannah Gas Company, St. Augustine Gas Company, Bangor Gas Company, Lowell Gas Light Company and American Utilities Associates upon receipt by the Trustee of:

"(i) A written request of the company signed by its president or a vice president for such release and delivery:

"(ii) A certified copy of an order of the Securities and Exchange Commission issued under the Public Utility Holding Company Act of 1935 authorizing or approving the sale or other disposition of the securities or interest with respect to which the release is requested (such order may take the form of approving a plan submitted under § 11(e) of the Public Utility Holding Company Act of 1935 or may take the form of granting an application for the sale or other disposition of the securities or interest or of permitting a declaration respecting such sale or other disposition to become effective): and

"(iii) The money, securities or interest constituting the consideration to be received by the company (which shall thereupon become and be a part of the Trust Estate) upon the sale or disposition of the released securities or interest in the event and to the extent that the transaction authorized or approved by the order of the Securities and Exchange Commission mentioned in clause (ii) above provides for or contemplates the receipt by the company of consideration and for the deposit of such consideration with the trustee.

"The notice of release of securities from the lien of the Debenture Agreement or any supplements thereto required by § 12 of the Supplemental Agreement dated July 18, 1935, shall not be required in the event of releases pursuant to this § 7(b)."

sion found that the plan, including the modification of the debenture agreement of American was necessary to effectuate the provisions of § 11(b) of the act and fair and equitable to the persons affected. On March 6, 1944 after entering its order dated March 2, 1944, approving the plan, the Commission issued a report to the secured debenture holders of American and copies of said report were mailed to all registered holders of such debentures.

8. Under the debenture agreement of American, as it existed prior to the filing of the plan, American could not dispose of its interests in Associates and Lowell without written consent to the release of the securities of those companies pledged with the Trustee.[2] The Commission found that the proposed modification of the debenture agreement which dispensed with the necessity of acquiring such formal consents, was necessary to facilitate compliance with the Commission's order directing American to dispose of its interests in Associates and Lowell.

9. Alpha Association's offer to purchase American's interests in Associates and Lowell contains the condition that American must obtain informal signed postcard consents from holders of at least 66⅔ per cent of the outstanding debentures in American. Such consents have been received.

Discussion. The New York Trust Company, as trustee under the debenture agreement of American, is the sole objector to the plan in this court. The trustee states that the debenture agreement prohibits the release of the pledged stock of Minneapolis Gas Light Company and Lowell without the consent of the holders of 66⅔ per cent in principal amount of outstanding debentures and a certificate of value of an independent engineer as to the worth of the substituted collateral; and in the case of pledged stock of other subsidiaries of American, there may be no release without such a certificate of value. The trustee points out that there is no provision in the agreement permitting the release of Associates' note.

It is part of the plan before the court to amend the agreement by a supplemental writing which will provide that any of the pledged securities held by the trustee shall be released upon receipt by the trustee of (1) a written request from American and (2) a copy of an order of the SEC approving the disposition of the securities to be released. The consideration to be received by American from the sale of any of the pledged securities is to be deposited with the trustee.

[1–4] The trustee argues that to substitute new provisions for the release of collateral is to subtract protective provisions from the agreement, resulting in a dilution of the lien provided for in that agreement. Reliance is had on § 26(c) of the act.[3] The

[2] The consents had to be formally acknowledged or accompanied with an affidavit of a witness averring to the authenticity of the execution of such consents.

[3] Section 26(c), 15 USCA § 79z(c) provides: "Nothing in this title shall be construed (1) to affect the validity of any loan or extension of credit (or any extension or renewal thereof) made or of any lien created prior or subsequent to the enactment of this title, unless at the time of the making of such loan or extension of credit (or extension or renewal thereof) or the creating of such lien, the person making such loan or extension of credit (or extension or renewal thereof) or acquiring such lien shall have actual knowledge of facts by reason of which the making of such loan or extension of credit (or extension or renewal thereof) or the acquisition of such lien is a violation of the

trustee's sole authority for its position is City Nat. Bank & Trust Co. v. Securities and Exchange Commission (1943) 48 PUR(NS) 195, 134 F (2d) 65. That case is no authority for the trustee. In fact, this court followed the City National Bank & Trust Company Case for the proposition that where the Commission had ordered liquidation of a public utility holding company which had issued bonds which could be matured at the option of the company at a premium before maturity, a plan which provided that bonds might be satisfied prior to maturity without payment of the premium was fair and equitable. See In Re North Continent Utilities Corp. (1944) 54 PUR(NS) 401, 54 F Supp 527.

The argument that if § 26(c) does not protect the lien rights of the debenture holders then the act itself violates the provisions of the Fifth Amendment of the Constitution is unsound. This argument is based upon the proposition that the order of the Commission impairs a property right fixed by the contract and that the protective provisions found in the agreement are materially weakened under the plan. If this view be sound, § 26 (c) is paramount to § 11, and it would seem that Congress has unwittingly nullified its own purpose in creating the Act in the first place. Section 11(b)(2) contains the mandate to the Commission to proceed to its business of simplifying public utility holding company corporate structures in order that they may not be unduly or unnecessarily complicated and to be watchful that there will be no unfair and inequitable distribution of voting power among the stockholders of a subject company. In performing its duties, the Commission must see that the persons affected by a change in any particular corporate structure must be treated fairly and equitably. As the act is a command of the government, contractual relationships must ex necessitate give slightly in the face of such legislation. In Re United Light & P. Co. (1943) 51 PUR(NS) 235, 51 F Supp 217, affirmed sub. nom. In Securities and Exchange Commission v. United Light & P. Co (1944) 53 PUR(NS) 129, 142 F(2d) 411, this court held valid a plan which gave something to common although there was not sufficient to pay the liquidating preferences on the preferred, and this in spite of the charter which provided that the preferred was to be entitled to the stated preferences whether the dissolution or liquidation was voluntary or involuntary. And in Re North Continent Utilities Corp *supra*, and in Re Consolidated Electric & Gas Co. (1944) 55 F Supp 211, this court indicated that the contract premium of bondholders could be altered where the alteration was fair and equitable. In other words, where the act is applicable the contracts between the corporation and its security holders and the contracts between the security holders inter sese have come to an end because Congress has so decreed it (Cf. In Securities and Exchange Commis-

provisions of this title or any rule or regulation thereunder, or (2) to afford a defense to the collection of any debt or obligation or the enforcement of any lien by any person who shall have acquired such debt, obligation, or lien in good faith for value and without actual knowledge of the violation of any provision of this title or any rule or regulation thereunder affecting the legality of such debt, obligation, or lien."

sion v. United Light & P. Co. *supra*) and the only question for the district court in such cases is whether the particular contract alterations are fair and equitable to those affected thereby.[4]

Accordingly, the court rules that the modifications of the debenture agreement are fair and equitable to the persons affected thereby, and that the Commission's approval of the plan does not prejudice any constitutional or legal right of either the trustee or of any debenture holder to object to any future order affecting the lien of the debenture agreement on the remaining collateral or on the proceeds from the sale of such, or which may provide for a distribution of the proceeds of any such sale in any manner other than the deposit thereof with the trustee. Hence, the court makes the following conclusions of law:

1. The court has jurisdiction over the plan and the assets of American.

2. The Commission gave reasonable notice and opportunity for hearing upon the plan before it and before this court.

3. The plan including the terms and provisions relating to the proposed modifications of the debenture agreement of American, is appropriate to effectuate the provisions of § 11 and is fair and equitable to the holders of American's debentures within the meaning of § 11(e).

4. While § 26 deals with the validity of certain rights of creditors it does not limit either the power of the Commission or this court to modify such rights as an incidence as to what is a fair and equitable plan under § 11.

5. To the extent necessary to enforce and carry out the terms and provisions of the plan relating to the proposed modification of American's debenture agreement, it is appropriate for this court to take exclusive jurisdiction of American and such of its assets as are pledged as security for the debentures of American; and by order, this court will direct that such terms and provisions of the plan be consummated, i. e., it will direct that American and its officers, directors, and agents, and the trustee and its officers, directors and agents, take such steps and perform such acts as may be necessary for the purpose of carrying out said terms and provisions of the plan, and that American and the trustee execute forthwith a supplemental agreement in the form of Exhibit C to the application of the Commission herein.

[4] The protective measures surrounding the release of collateral described in the debenture agreement are in no way diluted by the proposed supplemental agreement. The condition for the consent of 66⅔ per cent of the debenture holders has been met by the requirement of Alpha Association that such consents be had by means of the signed postcard writings. The point that these consents should have donned the formal dress of an acknowledged instrument is without merit in view of the fact that there is an entire absence of any evidence which challenges the authenticity of the postcard consents as not truly reflecting the desires of the debenture holders. In so far as the provision found in the debenture agreement for the filing of a certificate of value by an independent engineer is concerned, obviously the substitution of the Commission's findings of value, or what is fair consideration in connection with the sale of any part of the collateral, is more protective in its function. Not only will the Commission zealously guard the rights of debenture holders by demanding that a fair price be had in connection with such sales, but any party aggrieved has the right to appeal under § 24(a) of the act to a circuit court of appeals. The debenture holder has not only the protective sanctions of the administrative agency but he has resort to judicial review. Such substantial rights are not given him under the old provisions of the debenture agreement which deal with the certificate of value to be filed by an independent engineer.

6. The plan having been approved by the Commission and by this court in accordance with § 11(e) of the act, by order to be entered, all persons will be enjoined from instituting or maintaining any action in any court, or any proceeding before any administrative body, tending to obstruct the execution of the terms and provisions of the plan relating to the proposed modification of the debenture agreement.

A form of order should be submitted granting the present application to enforce and carry out the terms and provisions of the plan relating to the proposed modifications of the debenture agreement between American and the trustee.

UNITED STATES CIRCUIT COURT OF APPEALS, FIRST CIRCUIT

American Power & Light Company

v.

Securities and Exchange Commission

No. 3966
143 F(2d) 250
June 19, 1944

MOTION *to dismiss petition by holding company to review accounting order of Securities and Exchange Commission directed only against holding company's subsidiary; motion granted and petition dismissed.*

Corporations, § 1 — Questions of litigation — Discretionary matters.

1. Whether a corporation shall institute litigation to enforce a corporate right is ordinarily a matter of internal management left to the discretion of the directors in the absence of instructions by vote of the stockholders, p. 243.

Corporations, § 17 — Rights of stockholders — Corporate refusal to start litigation.

2. The mere fact that the refusal of a corporation to engage in litigation may result in a diminution of dividends to stockholders. does not give a stockholder standing to invoke the aid of a court of equity in overriding the judgment of the management, p. 243.

Appeal and review, § 80 — Parties — Stockholders' right to review.

3. The provision of the Holding Company Act authorizing "any person or party aggrieved" by an order of the Securities and Exchange Commission to obtain review was not intended to confer upon a stockholder the independent right to seek review of an accounting order directed only against the corporation, p. 243.

Appeal and review, § 80 — Parties — Stockholders' right to review.

4. That a holding company was a party to proceedings before the Securities and Exchange Commission, in which the Commission issued an accounting order directed solely against the holding company's operating subsidiary, did not make the holding company a person or party aggrieved, with the right to obtain a review of the Commission's order, p. 245.

APPEARANCES: R. A. Henderson, A. J. G. Priest, James S. Regan, and Reid & Priest, all of New York city, for petitioner for review; Homer Kripke, Assistant Solicitor, Roger S. Foster, Solicitor, and Morton E. Yohalem, Counsel, Public Utilities Division and Alfred Hill, all of Philadelphia, Pa., for respondent.

Before Magruder, Mahoney, and Woodbury, Circuit Judges.

MAGRUDER, C.J.: This case is now before us on respondent's motion to dismiss a petition filed in this court by American Power & Light Company under § 24(a) of the Public Utility Holding Company Act of 1935, 49 Stat 834, 15 USCA § 79x (a), to review portions of an order of the Securities and Exchange Commission.

The Commission on July 10, 1941, instituted proceedings under §§ 11 (b)(2), 12(b)(c) and (f) and 15 (f) of the act, 15 USCA §§ 79k(b) (2), 79*l*(b)(c)(f), 79*o* (f), against Florida Power & Light Company, American Power & Light Company (the present petitioner) and Electric Bond & Share Company. Florida is a public utility company incorporated in the state of Florida and is engaged in the business of supplying electricity and gas to a large number of communities in that state. All the common stock of Florida is held by American, a registered holding company incorporated in the state of Maine. American in turn is controlled by Bond & Share as the top holding company.

The proceedings raised issues as to the existence of substantial write-ups in the plant account of Florida; the adequacy of its depreciation reserve; the necessity for stopping dividends on preferred and common stocks held by American and interest on the debentures owned by American; the existence of an unfair and inequitable distribution of voting power among Florida's various classes of securities and security holders; the steps necessary to cure such inequities, if found to exist, including subordination to publicly held securities of holdings by American of Florida's preferred stock and debentures; and the treatment to be accorded certain sums received by American from Florida on or about July 1, 1941, as dividends on preferred stocks.

By way of partial answer to the matters complained of by the Commission, Florida and American filed joint applications, and subsequent amendments thereto, seeking approval of proposals for recapitalization and refinancing of Florida involving, among other things, certain alterations in the securities of Florida held by American. By order of the Commission these applications were consolidated for hearing with the afore-

said proceedings which had been instituted by the Commission.

On December 28, 1943, the Commission filed its findings, opinion and order in the consolidated proceedings. The order granted the applications of Florida and American for approval of their proposals for the recapitalization and refinancing of Florida. Except in so far as it granted such applications, the order required no changes in Florida's capital structure or in American's holdings of Florida's securities.

The order did, however, in paragraphs 2 and 4, direct Florida to make certain accounting entries relating to matters not covered by the proposals contained in the applications which had been filed by Florida and American. These two paragraphs of the order are the only ones which American seeks now to have us review in the pending petition. These paragraphs of the order read as follows:

"(2) It is further *ordered* that Florida Power & Light Company shall classify in Account 107 and eliminate from the plant account by charge to earned surplus not later than December 31, 1944, an amount of $1,815,655 consisting of capitalized intrasystem profits paid to affiliated companies as construction and engineering fees; . . .

"(4) It is *further ordered* that pending final determination of the amount and disposition to be made of Account 100.5 items presently in the plant account of Florida, Florida shall annually beginning with the calendar year 1944 appropriate out of earned surplus to a contingency reserve at least $700,000, such act of appropriation to be without prejudice, however, to respondents' right to contest the validity of any definitive order with respect to such items as may ultimately be issued; . . . ."

Paragraph 2 of the order, above quoted, relates to certain engineering and construction fees capitalized by Florida in its plant account and paid to Phoenix Utility Company, a wholly owned construction subsidiary of Bond & Share, in connection with the construction of interconnections and additional generating facilities.

Paragraph 4 of the order, above quoted, was based on the fact that American had paid a greater sum for the properties transferred by it to Florida at the latter's organization than the original cost of those properties to the persons who had first devoted them to public service. The object of the Commission's order was to require Florida ultimately to value the properties transferred to it by American on the basis of the original cost of those properties to such persons. The same object was sought by the Commission with respect to those properties purchased by Florida itself after organization.[1] It was indicated that the adjustment on account of these two items might exceed $10,000,000. With reference to this matter, the Commission stated in its opinion: "We are cognizant, however, of the fact that the exact amount includible in Account 100.5 has not been finally established and will not be until

[1] See Kripke, A Case Study in the Relationship of Law and Accounting: Uniform Accounts 100.5 and 107, 57 Harv L Rev 433 (April, 1944); see also Pacific Power & Light Co. v. Federal Power Commission (1944) 53 PUR(NS) 12, 141 F(2d) 602.

the original cost study of the company is completed and has been reviewed by us. We believe that in the interests of orderly procedure, the company should begin now to make provision complete its study and to have that study reviewed by us before we take definitive action either with respect to classification in the appropriate account or with respect to a formal program of disposition. However, since all present indications are that there will be approximately $10,500,000 of such acquisition adjustments ultimately to be disposed of, conservative accounting requires that the company should begin now to make provision for such disposition. We will therefore order (subject to further order of the Commission in connection with the company's original cost study or otherwise) that commencing in 1944, the company annually appropriate out of earned surplus to a contingency reserve, the sum of at least $700,000, such act of appropriation, however, to be without prejudice to its right to contest the validity of such definitive order with respect to the matter as may ultimately be issued."

Section 24 of the act, under which American seeks to have this court review paragraphs 2 and 4 of the Commission's order, reads as follows: "Section 24(a). Any person or party aggrieved by an order issued by the Commission under this title may obtain a review of such order in the circuit court of appeals of the United States within any circuit wherein such person resides or has his principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the entry of such order, a written petition praying that the order of the Commission be modified or set aside in whole or in part. A copy of such petition shall be forthwith served upon any member of the Commission, or upon any officer thereof designated by the Commission for that purpose, and thereupon the Commission shall certify and file in the court a transcript of the record upon which the order complained of was entered. Upon the filing of such transcript such court shall have exclusive jurisdiction to affirm, modify, or set aside such order, in whole or in part. . . ."

Paragraphs 2 and 4 of the order are directed only to Florida; American is not mentioned therein nor required to do anything or refrain from doing anything. No doubt Florida is a "party aggrieved," entitled to have the order reviewed in the appropriate circuit court of appeals. In fact, after the Commission filed its motion to dismiss American's petition at bar, Florida filed in the circuit court of appeals for the fifth circuit a petition in substantially identical terms seeking review of paragraphs 2 and 4 of the Commission's order. The Commission contends, in support of its motion to dismiss, that Florida is the only "party aggrieved" by the order, and that American, whose only interest in the matter is derived through its holding of the common stock of Florida, has no independent standing to seek a review of the order pursuant to § 24(a).

On the other hand, American contends: "While some of the grounds of objection to the orders complained of are available to both Florida and American, American is the party en-

titled to urge that the appropriations from earned surplus required by the orders will deprive American of dividends from the money so appropriated. Undoubtedly the Commission will contend that Florida cannot complain that American is being deprived of dividends as a result of the orders." The Commission denies that its motion to dismiss is a procedural maneuver designed to block the Florida-American interests out of arguments which should be available to them. In its brief the Commission states that it does not contend that "Florida lacks standing to seek judicial review of an order directing the manner in which it shall keep its accounts, and we recognize that among the matters which may properly be considered on such review is the question whether the order improperly interferes with any right of the corporation to pay dividends and of its stockholders to receive them, and with the value of its outstanding securities." This position counsel for the Commission reaffirmed in a most explicit manner at the oral argument before us.

[1–3] Upon familiar principles of corporation law, whether a corporation shall institute litigation to enforce a corporate right, like other business questions, is ordinarily a matter of internal management left to the discretion of the directors in the absence of instruction by vote of the stockholders. "Courts interfere seldom to control such discretion intra vires the corporation, except where the directors are guilty of misconduct equivalent to a breach of trust, or where they stand in a dual relation which prevents an unprejudiced exercise of judgment; and, as a rule, only after application to the stockholders, unless it appears that there was no opportunity for such application, that such application would be futile (as where the wrongdoers control the corporation), or that the delay involved would defeat recovery." United Copper Securities Co. v. Amalgamated Copper Co. (1917) 244 US 261, 263, 264, 61 L ed 1119, 37 S Ct 509, 510.[2] The mere fact that the refusal of a corporation, through its management, to engage in litigation, may result in a diminution of dividends to stockholders, does not give a stockholder standing to invoke the aid of a court of equity in overriding the judgment of the management. Hawes v. Oakland (1881) 104 US 450, 462, 26 L ed 827.

Consistently with these principles, if the board of directors of Florida had on their own initiative, in good faith and in the exercise of their business judgment, made the accounting changes which paragraphs 2 and 4 of the Commission's order directed Florida to make, a minority stockholder would not have been heard to complain, even though such change resulted in some temporary curtailment of dividends. Whether to contest the Commission's order to this effect is equally a matter of internal corporate management committed in the first instance to the discretion of Florida's

[2] This principle is embodied now in Rule 23(b) of the Federal Rules of Civil Procedure, 28 USCA following § 723c. While Rule 23(b) is applicable only to district courts, we see no reason why the accepted principle, which antedated Rule 23(b), should not be applicable to review in the circuit courts of appeals under § 24(a) of the Public Utility Holding Company Act.

board of directors. And, of course, in circumstances like the present, American does not need the aid of a court to compel the assertion of a corporate right, because as controlling stockholder in Florida, American can cause Florida to file a petition for review of the Commission's order.

In Pittsburgh & W. V. R. Co. v. United States (1930) 281 US 479, 74 L ed 980, 50 S Ct 378, the Interstate Commerce Commission had authorized the New York Central Railroad and other rail carriers to join in establishing a union station at Cleveland through a jointly owned subsidiary. The Wheeling & Lake Erie Railroad had for some years owned and maintained its independent station at Cleveland on the approach to the union terminal. Wheeling was persuaded to sell its site and become a tenant of the new station at a comparatively low rental, and filed with the Commission an application for authorization to do so. The Pittsburgh & West Virginia Railway, a minority stockholder in Wheeling, intervened and was heard before the Commission in opposition to the plan on various grounds, one of which was that it might imperil Wheeling's financial condition. The Commission, however, approved the plan, and Pittsburgh brought suit in a 3-judge district court under the Urgent Deficiencies Act of October 22, 1913, 38 Stat 219, 220, 28 USCA § 47, to suspend and set aside the Commission's order. The district court denied relief on the merits; upon appeal the Supreme Court held that Pittsburgh had no standing to sue and that the bill should have been dismissed without inquiry into the merits. Justice Brandeis, speaking for the court, said, *supra,* 281 US at p. 487: "Finally, the claim that the order threatens the Wheeling's financial stability, and consequently appellant's financial interest as a minority stockholder, is not sufficient to show a threat of the legal injury necessary to entitle it to bring a suit to set aside the order. This financial interest does not differ from that of every investor in Wheeling securities or from an investor's interest in any business transaction or lawsuit of his corporation. Unlike orders entered in cases of reorganization, and in some cases of acquisition of control of one carrier by another, the order under attack does not deal with the interests of investors. The injury feared is the indirect harm which may result to every stockholder from harm to the corporation. Such stockholder's interest is clearly insufficient to give the Pittsburgh a standing independently to institute suit to annul this order." Pittsburgh & W. V. R. Co. v. United States, *supra,* was recently cited with approval in Boston Tow-Boat Co. v. United States, 321 US 632, 88 L ed —, 64 S Ct 776, decided by the Supreme Court April 3, 1944. See also United Copper Securities Co. v. Amalgamated Copper Co. *supra;* Westmoreland Asbestos Co. v. Johns-Manville Corp. (1939) 30 F Supp 389, affirmed on opinion below (1940) 113 F(2d) 114; NY PA NJ Utilities Co. v. New York Pub. Service Commission (1938) 25 PUR (NS) 420, 23 F Supp 313.

It is true that the Urgent Deficiencies Act, under which review of the order of the Interstate Commerce Commission was sought in Pittsburgh

& W. V. R. Co. v. United States, *supra,* does not provide, as does § 24 (a) of the Public Utility Holding Company Act, that "any person or party aggrieved" may seek a review of the administrative order, but leaves the moving party's standing to seek review to be determined upon general principles. But the phrase "any person or party aggrieved" is not one of exact meaning; and we have no reason to think that Congress thereby intended to confer upon a stockholder the independent right to seek a review of the type of administrative order, directed only against the corporation, involved in the case at bar. It may be that so far as concerns the constitutional requirement of "case" or "controversy" Congress might have power to disregard the "corporate veil," to treat the controversy as one subsisting between the Commission and the stockholders of the corporation which has been ordered by the Commission to make the accounting changes here involved, and to confer upon such stockholders the independent right, in their own names, to seek review of the Commission's order. But we think it is clear that if Congress had intended any such departure from the ordinary principles of corporation law, it would have expressed such intention in explicit language.

[4] In applying to the case at bar the phrase "any person or party aggrieved," it is immaterial that American was a party to the administrative proceedings before the Commission. Pittsburgh & W. V. R. Co. v. United States, *supra,* 281 US at p. 486; Alexander Sprunt & Son v. United States (1930) 281 US 249, 254, 255, 74 L ed 832, 50 S Ct 315. Under § 19 of the Public Utility Holding Company Act, 49 Stat 832, 15 USCA § 79s, the Commission has broad discretion in admitting interested persons as parties to the administrative proceedings, but it by no means follows that all persons who properly participate as interested parties in the administrative proceedings are "parties aggrieved" within the meaning of the review provisions in § 24(a). As a matter of fact, in view of the inclusive nature of the issues projected in the proceedings initiated by the Commission in the present case, American was necessarily made a party respondent, because, among other things, one of the issues raised was whether it was necessary to subordinate to publicly held securities of Florida the holdings by American of Florida's preferred stock and debentures. But so far as concerns paragraphs 2 and 4 of the Commission's order, which are the only portions of the order now sought to be reviewed, proceedings to that end could have been instituted by the Commission against Florida alone, without joining American as a party respondent.

We shall refer briefly to some of the cases relied upon by petitioner.

In Northwestern Electric Co. v. Federal Power Commission (1944) 321 US 119, 88 L ed —, 52 PUR (NS) 86, 64 S Ct 451, the Commission made an accounting order against Northwestern Electric Company, an operating utility all of whose common shares are owned by American Power & Light Company. Northwestern filed in the proper circuit court of appeals a petition to review the order. American joined in the application for court review. Since

the particular circuit court of appeals undoubtedly had jurisdiction to review the order there was no point in challenging American's standing to join in the petition, and the Commission made no such challenge. Neither in the opinion of the circuit court of appeals nor in that of the Supreme Court was here any discussion of the question whether American had an independent standing to seek review of the accounting order against the corporation of which it was the controlling stockholder.

In Federal Communications Commission v. Sanders Bros. Radio Station (1940) 309 US 470, 84 L ed 869, 33 PUR(NS) 135, 60 S Ct 693, one holding a license to operate a broadcasting station, over whose objection the Commission had granted a permit for the erection of a rival station, was held to be a "person aggrieved or whose interests are adversely affected" by the decision of the Commission, within the meaning of § 402(b)(2) of the Communications Act of 1934, 48 Stat 1064, 1093, 47 USCA § 402(b)(2), and hence entitled to appeal from the Commission's decision to the court of appeals of the District of Columbia. The private economic injury which the said licensee suffered as a result of the Commission's decision was deemed sufficient to give the licensee a standing, as a sort of "private attorney general," [3] to present questions of public interest and convenience on appeal from the order of the Commission. The court pointed out, 309 US at p. 477, that it ascribed this meaning to the flexible phrase "person aggrieved or whose interests are adversely affected" in order to effectuate the purposes of the particular statute and because, otherwise, § 402(b)(2) would be deprived of any substantial effect. No comparable situation is presented in the case at bar. Neither in the Sanders Case, *supra,* nor in Federal Communications Commission v. National Broadcasting Co. *supra,* footnote 3, nor in Associated Industries v. Ickes (1943) 134 F(2d) 694, was the question presented whether a stockholder is a "person or party aggrieved" by an accounting order directed solely against the corporation, an order which the corporation is fully empowered to bring for review before the appropriate circuit court of appeals.

In Todd v. Securities and Exchange Commission (1943) 53 PUR(NS) 391, 137 F(2d) 475, the standing of a stockholder to seek review of a dissolution order pursuant to § 11(b)(2) of the Public Uility Holding Company Act was not challenged by the Commission, and the court's decision makes no allusion to the point.

In Okin v. Securities and Exchange Commission (1943) 137 F(2d) 398, 400, a stockholder sought review of an order of the Commission granting an application by the corporation for authority to sell the securities of a wholly owned subsidiary. The stockholder had appeared before the Commission in opposition to the application, charging fraud, and after being allowed a limited participation in the hearing, he was eventually ordered by the examiner to leave the room, and

[3] See Douglas, J., dissenting, in Federal Communications Commission v. National Broadcasting Co. (1944) 319 US 239, 265, note 1, 87 L ed 1374, 51 PUR(NS) 193, 63 S Ct 1035.

upon his refusal the examiner closed the hearing. The court stated that the only question before it was "whether, as petitioner so strenuously asserts, he was denied the essentials of a fair hearing." If the stockholder was entitled to be heard before the Commission on his charges of fraud, and had been denied the essentials of a fair hearing, it may well be that he should be deemed a person aggrieved by the ensuing order of the Commission. The court after examination of the record of the administrative proceedings concluded "that no error which could possibly affect the result occurred" and affirmed the Commission's order.

Finally, the petitioner relies heavily on our decision in Lawless v. Securities and Exchange Commission (1939) 32 PUR(NS) 467, 105 F(2d) 574. In that case, as this court understood the Commission's order, its effect was to cast doubt upon the validity of the new common stock and common stock purchase warrants which would be issued to petitioner in pursuance of a proposed recapitalization. In such a case a minority stockholder whose rights are affected is a person aggrieved by the Commission's order within the meaning of § 24(a), and has an independent standing to seek judicial review. In so far as the language of the Lawless opinion may intimate that the petitioner was a "person or party aggrieved" merely by virtue of the fact that he had been admitted to participation in the proceedings before the Commission, we do not think that it is correct.

Respondent's motion to dismiss the petition for review is granted, and the petition is dismissed for lack of jurisdiction.

ARIZONA CORPORATION COMMISSION

Re California Electric Power Company

Docket No. 8882-E-909, Decision No. 14956
July 25, 1944; rehearing denied August 30, 1944

APPLICATION *for authority to exercise rights under franchises granted to predecessors, for approval of stipulation entered into between predecessors and another public utility assuming to divide territory, and for an extension of territorial rights under existing certificate; stipulation declared invalid, extension denied, and authority to exercise authority granted to predecessor granted.*

Monopoly and competition, § 29 — Division of territory — Territorial agreements.

No two utility companies have any lawful right to divide between themselves territory in which each will render service, since it is the duty of each to remain available for service in any area in which the public needs may require service.

APPEARANCES: H. M. Hammack and Henry W. Coil, for California Electric Power Company, applicant; Snell & Strouss, & Mark Wilmer, for Arizona Edison Company, Inc., protestant.

PETERSEN, Commissioner: On April 9, 1943, the California Electric Power Company filed with us an application praying for authority to exercise the rights granted to its predecessors on June 25, 1928, by the board of supervisors of Yuma county permitting it, its successors and assigns, to construct, maintain, and operate public utility electrical lines along, over, and across the public roads, highways, and thoroughfares of Yuma county outside the limits of municipal corporations, except state highways and for an extension of its territory granted under its existing certificate of convenience and necessity. It also asked for the approval of the Commission of a stipulation entered into between its predecessors, E. F. Sanguinetti and F. L. Ewing, and the Yuma Light, Gas and Water Company, predecessor of the Arizona Edison Company, Inc., assuming to divide the territory within which each of said companies should operate within the Yuma area. Following notice duly given, the hearing thereon was held at the county court house in Yuma commencing on May 10, 1943.

Subsequent to the filing of the application the Arizona Edison Company, Inc., filed written objections thereto and a motion to dismiss the proceedings. The objections were overruled and the motion to dismiss was denied. At the hearing, it appeared by counsel and objected to said application in so far as it sought to validate said stipulation and in so far as it restricted or might operate to restrict the expansion of the utility service of that company in and about the city of Yuma. Various property owners and citizens of Yuma and vicinity appeared to protest any action of this Commission which might result in an approval of the stipulation above referred to or which would prevent Arizona Edison Company from expanding its utility services with the growth of the city of Yuma and vicinity.

Voluminous testimony was taken and, upon the conclusion of the hearing the application together with the objections and protests thereto was ordered submitted upon briefs. These briefs have been filed and the Commission has fully and carefully considered the matter, being guided by the fundamental principle that it is the best interests of the public which have first consideration.

The Arizona Edison Company is the successor to the Yuma Light, Gas and Water Company which commenced operations in 1892 and was therefore exempt from the provisions of the Statehood Statutes requiring it to obtain a certificate of convenience and necessity. For many years it operated exclusively within the city limits of Yuma. With the development of farming in the valley there was a demand and a real need for expansion of electric service for pumping and other farm and agricultural purposes. Appeals were made to the company for this expansion but were refused resulting in the granting of a certificate to E. F. Sanguinetti and F. L. Ewing on May 26, 1919, authorizing them to establish and operate an electric utility

to meet these growing farm needs. The new company was to confine its operations to the territory outside of the city limits except to the Yuma Ice Company within said corporate limits. Since that time the city has extended its corporate limits a number of times and the conditions therefore are different from what they then were.

The city of Yuma is the county seat of the county of that name. It is a division point on the Southern Pacific Company and is surrounded by a vast area of rich agricultural land which has experienced a phenomenal growth which unquestionably will continue and increase over the years to come. It is upon this, the most sound and stable foundation of all industry, that the future of the territory rests.

Since the Commission has never approved the stipulation to which reference has been made, it follows that it never had and does not now have any validity. Our order of May 26, 1919, Decision No. 1021, specifically denying the application for approval thereof, was, in our opinion, final on that point. However, in order that there may be no question about it, we hereby expressly disapprove the same and find it to be invalid and of no binding force or effect.

This Commission recognizes that the objector, Arizona Edison Company, Inc., has lawfully operated in the city of Yuma and certain sections of Yuma county for many years and that in the public interest it should be permitted to extend its operations and service to territory within and without said city in the ordinary course of business and the authority hereby granted is subject to that right, and subject to the restriction above set forth that existing service shall not be duplicated. No two utility companies have any lawful right to divide between themselves territory in which each will render a utility service. It is the duty of each to remain available for service in any area in which the public needs may require service.

The Commission is further of the opinion and so finds that both of said utility companies, viz., California Electric Power Corporation and Arizona Edison Company, Inc., are presently serving in the field covered by this application and that each company is entitled to continue such service, expanding the same into said areas as the normal growth of each utility and the needs of the public justify such expansion. Neither utility, however, shall construct an extension duplicating an existing service.

SECURITIES AND EXCHANGE COMMISSION

Re The Commonwealth & Southern Corporation (Delaware)

File Nos. 59-20, 59-8, 54-75, Release No. 5191
August 3, 1944

PETITION *by counsel for certain common stockholders, in recapitalization proceedings involving registered holding companies, attacking proposed findings of Commission's staff; petition denied.*

Intercorporate relations, § 19.8 — Holding company simplification — Procedure — Objection to staff proposal.

1. A petition for counsel representing common stockholders, in a proceeding for recapitalization of a holding company, challenging the accuracy of portions of the Commission staff's proposed findings and requesting that such findings be stricken, that the staff be directed to file amended findings, and that in the meantime the proceedings be stayed, should be denied when, under a stipulation entered into by all participants, the Public Utilities Division of the Commission was to submit a draft of proposed findings and opinion, to be followed by the opportunity for submission of exceptions and briefs by other participants and reply briefs by all participants, after which there would be oral argument before the Commission, p. 250.

Intercorporate relations, § 19.8 — Holding company recapitalization — Procedure — Argument on petition.

2. Oral argument on a petition challenging the accuracy of the Commission staff's findings, in a proceedings relating to recapitalization of a holding company, should be denied except to the extent that oral argument will later be held on the merits of the case under a stipulation establishing a post-hearing procedure, p. 250.

By the COMMISSION:

[1, 2] There are pending before us proceedings pursuant to § 11(e) of the Public Utility Holding Company Act of 1935 upon an amended plan of recapitalization for The Commonwealth & Southern Corporation. Commonwealth, a registered holding company, filed the pending plan in order to comply with our order of April 9, 1942, 44 PUR(NS) 217, directing Commonwealth to reduce its capital structure to a single class of common stock. Upon the closing of the record in these proceedings a stipulation was entered into by all counsel who had participated therein, establishing a post-hearing procedure. This procedure involved submission by the Public Utilities Division of a draft of proposed findings and opinion recommended by the Division for adoption by the Commission, to be followed by the opportunity for the submission of exceptions and

briefs by the other participants and reply briefs by all participants. Thereafter, oral argument would be held before the Commission.

On May 29, 1944, the staff of the Public Utilities Division filed, and mailed to the other participants in the proceeding, its draft of proposed findings and opinion. The time for the filing of exceptions and briefs by the other participants, as extended from time to time, expires on August 3, 1944. On July 31, 1944, Alfred J. Snyder, who has participated in the hearings as counsel for certain common stockholders, filed a petition challenging the accuracy of various portions of the staff's proposed findings and requesting that the present proposed findings be stricken, that the staff be directed to file amended findings, and that in the meantime the proceedings be stayed. Oral argument on the petition was also requested.

The post-hearing procedure which has been adopted in this case, and which we have heretofore followed in numerous proceedings of this kind, which involve complicated issues, has been developed for the specific purpose of ensuring the participants a full opportunity to challenge the contentions of the staff and to present opposing points of view. Under this procedure, the issues which Snyder's petition raises with respect to the accuracy and validity of the staff's statements of facts and conclusions of law are issues which should properly be raised by exceptions to the staff's proposals or in a brief in opposition thereto. To the extent that the staff may concede any errors or omissions in its recommended findings, it may thereafter state its position to this effect. To the extent that exceptions are taken which are not conceded by the staff, the oral argument will afford full opportunity for all participants to express their respective points of view.[1]

We believe that this procedure is an orderly and effective method of sharpening the issues of fact and law which are to be determined in the proceeding. The present petition is incompatible with this procedure and to grant it would serve no purpose other than to unduly protract the proceeding. In this connection it is to be noted that on three prior occasions, viz., June 1st, June 29th, and July 12th, Snyder requested and received extensions of time for the filing of his exceptions and brief.

For the reasons set forth, the petition is denied. With respect to Snyder's request for oral argument on his petition, it would appear that the oral argument to be held later on the merits of the case will afford him ample opportunity to argue many of the matters underlying the contentions advanced in the petition, and, except to this extent, the request for oral argument on the petition is denied. It is so *ordered*.

[1] The Commission, of course, will pass independently upon the record and will make its own determination of the various matters of law and fact at issue.

CALIFORNIA RAILROAD COMMISSION

Re Southern California Edison Company Limited

Decision No. 37192, Application No. 25632
July 11, 1944

APPLICATION *for certificate to exercise electric franchise; on rehearing preliminary decision vacated and certificate to exercise rights and privileges under franchise granted.*

Franchises, § 25 — Substitution of new franchise — Right of utility.

1. A public utility operating under a franchise granted by a city under the Broughton Act for a fixed term of years has the right to accept in substitution therefor an indeterminate franchise under the Franchise Act of 1937 (a later expression of legislative policy with regard to franchises) although annual charges under the later franchise are substantially higher, p. 254.

Expenses, § 54 — Annual franchise cost — Substitute franchise.

2. A public utility company, exercising its legal right to accept a franchise from a city under the Franchise Act of 1937 to replace a franchise requiring lower annual charges granted under the Broughton Act, has the right to charge as an expense of operation the higher annual cost incident to maintaining the later franchise, p. 254.

Franchises, § 47 — Nature of annual charge.

Statement by California Commission that a utility's obligation to pay annual franchise charges rests on contract and that such a charge is neither a tax nor a license, p. 254.

Accounting, § 23 — Capitalization of rights — Franchises — Certificates.

Statement that California Commission cannot lawfully authorize capitalization of a franchise granted by a municipality, or of a certificate to exercise such franchise, or of the right to enjoy such franchise or certificate, in excess of the amount (exclusive of tax or annual charge) paid to the state or political subdivision as a consideration for the grant, p. 256.

Valuation, § 329 — Franchises.

Statement by California Commission that a franchise granted by a city shall never be given any value before any court or other public authority, in any proceeding of any character, in excess of the cost to the grantee of the necessary publication and any other sum paid by it to the municipality therefor at the time of acquisition, p. 256.

APPEARANCES: Gail C. Larkin, B. F. Woodard, E. W. Cunningham, and R. E. Woodbury, for applicant; M. Tellefson, City Attorney, for the city of Culver City.

SACHSE and HAVENNER, Commissioners: The applicant, Southern California Edison Company Ltd., seeks authority from this Commission under the provisions of § 50(b) of the Public Utilities Act to exercise the rights and privileges accruing to it under a franchise granted to said applicant by the city of Culver City.

The Commission heretofore rendered its decision in this case,[1] the operation of which was suspended by virtue of a rehearing having been granted. That decision authorized the exercise by applicant of the rights and privileges under said franchise but inserted in said decision the following condition:

"(b) That subsequent to the effective date of Ordinance No. 563 and until October 25, 1975, the date of expiration of Ordinance No. 170, applicant will charge to operating expenses only such an amount of the franchise tax payable to Culver City as would have accrued under the terms and conditions of Ordinance No. 170, and will charge to surplus any excess over such amount and accruing by reason of the terms and conditions of Ordinance No. 563; and that no claim for such excess shall ever be made by applicant before this Commission in any rate or other proceeding."

The franchise in question was granted to applicant by the city of Culver City under the provisions of the Franchise Act of 1937,[2] pursuant to Ordinance No. 563 under date of April 26, 1943. This franchise is of indeterminate term. Applicant at the time of applying for said franchise enjoyed a franchise granted by the city of Culver City to it under the provisions of the Broughton Act,[3] pursuant to Ordinance No. 170. This latter franchise was for a fixed term of years expiring on October 25, 1975, the term of years being fifty, it having been granted on October 25, 1925.

Decision No. 36587 was preliminary and required applicant, as a condition to the granting of its application by the Commission, to file a stipulation within thirty days after the effective date of said decision and order agreeing to the condition heretofore referred to. Said order provided that if such stipulation were filed in compliance with the terms and conditions of said order, a supplemental order would be made by the Commission finding that public convenience and necessity required the exercise by applicant of the rights and privileges granted to it by said ordinance.

Thereafter, applicant filed its petition for rehearing in this proceeding, which petition was granted on September 21, 1943, and the matter was heard at Los Angeles on January 19, 1944. At this hearing the city of Culver City appeared through its mayor and city attorney and participated in the proceeding. Considerable testimony was presented and applicant was given full opportunity to develop its position, to wit, that it acted fully within its legal rights and wisely and to the interest of its customers and stockholders in replacing its old Broughton Act franchise with

[1] Application No. 25632, Decision No. 36587, rendered September 1, 1943 (44 Cal RCR (797).

[2] Stats 1937, p. 1781.

[3] Stats 1905, p. 777, as amended.

one issued under the 1937 act. It was applicant's further contention that the Commission should make its final order granting the necessary certificate without requiring the stipulation heretofore set forth. After submission of the case, applicant in due course filed an able brief, which has been helpful to the Commission in arriving at a decision in this matter.

The Commission might discuss some of the many legal questions raised in respect to the jurisdiction of municipalities and itself over utilities through franchises and certifications. However, the statutes speak for themselves and we shall address ourselves to the more factual issues in this case.

[1, 2] The Commission now finds before it a more extensive and complete record dealing with the relative merits of franchises issued under the Broughton Act and the 1937 Franchise Act. In this respect it appears that municipalities generally seem to prefer to grant franchises under the provisions of the Franchise Act of 1937 rather than under the provisions of the Broughton Act. The record in this case contains claims made by the applicant and, to some extent, by the city of Culver City that a franchise granted under the Franchise Act of 1937 is more desirable from the standpoint of the municipality, the general public and the utilities than is a franchise granted under the provisions of the Broughton Act. Without attempting to reconcile all of these claims and without passing upon the merits of one type of franchise over the other, it is apparent that the Franchise Act of 1937 is a later expression of legislative policy with regard to franchises in so far as municipalities are concerned than is the policy laid down in the Broughton Act. The record in this case also shows that the Franchise Act of 1937 resulted from dissatisfaction arising from the operation of the Broughton Act and particularly with regard to the interpretation of that act by the supreme court of this state in the case of Tulare v. Dinuba.[4] It is obvious, too, from a reading of both of these acts, that the Franchise Act of 1937 is clearer and more explicit in its terms than is the Broughton Act.

The annual charge payable by a utility under a franchise granted to it pursuant to the provisions of the Broughton Act has been construed by the supreme court of this state in the Dinuba decision, heretofore referred to, to be a toll or rental and that the obligation of the utility to pay the same rests upon contract. Such annual charge appears to be neither a tax nor a license. The same is true of the annual charge paid by a utility under the Franchise Act of 1937. The amount of such charge has been set by the legislature in the statute referred to and is not fixed by the parties to the franchise.

A person may, with propriety from a legal standpoint, avail himself of the rights and privileges granted him under the authority of law. It is true that under the Broughton Act franchise the applicant paid an annual charge to the city of Culver City of only $493.21 for the year 1942, whereas, under the franchise granted it under the provisions of the 1937

[4] (1922) 188 Cal 664, 670, 674, 206 Pac 983.

Franchise Act, the applicant would be required to pay to the city of Culver City for the same period an annual charge of $4,158. It is also true that the Broughton Act franchise ran until October 25, 1975 Therefore, it can be seen that, if we permit the annual charge to be paid by applicant under the franchise granted to it pursuant to the Franchise Act of 1937 to be charged to operating expenses, the ratepayers will be paying many times what they have been paying for franchise charges under the Broughton Act franchise. It was with this feature of the case in mind that the Commission attached the condition previously quoted to its decision and order in this proceeding. In other words, the prior order of this Commission required the utility to charge no more to operating expenses for its annual franchise payments during the remaining unexpired term of the Broughton Act franchise than it would have had to pay if it continued to operate under said Broughton Act franchise and had not secured a franchise under the Franchise Act of 1937.

We know, and the record shows, that this applicant is securing franchises from various municipalities under the provisions of the Franchise Act of 1937. The record shows that the municipalities themselves have requested the applicant to take out franchises under this particular statute. The franchises under the 1937 act, as a rule, result in larger payments to the municipalities than do those granted under the Broughton Act. Also, it is here pointed out that applicant, under the provisions of the Franchise Act of 1937, has very probably abandoned the franchise which it held under the Broughton Act.[5]

In view of all the facts and circumstances developed in the present record, it is our conclusion that applicant has the right to avail itself of the provisions of the Franchise Act of 1937, particularly when as in this case, there is no showing made that the utility has taken any undue advantage of the municipality nor that the public interest is adversely affected to any serious degree. Since it is our conclusion that the present record does establish the right and the desirability of applicant to replace its Broughton Act franchise with the one issued by the city of Culver City under the Franchise Act of 1937, it follows that the annual costs incident to maintaining that franchise in rendering the public utility service are an expense properly chargeable to operation.

We find that public convenience and necessity require that the applicant be granted authority to exercise the rights and privileges granted to it under the franchise created by Ordinance No. 563, adopted by the city council of Culver City on April

[5] Section 7 of the act provides that: "acceptance of any such franchise (i.e. the 1937 franchise) shall operate as an abandonment of all such franchises. . . . " (Parenthesis ours.)

This situation raises the question as to the wisdom of this section of the act for the reason that both the municipality and the utility involved would be placed in an uncertain and undesirable position, if this Commission should deny the application of applicant to exercise the rights and privileges under the franchise granted pursuant to the Franchise Act of 1937. Because of this, consideration might be given to an appropriate amendment to the Franchise Act of 1937.

26, 1943, without attaching the condition concerning the manner in which the annual charge under said franchise shall be disposed of by said utility in its accounts as contained in our preliminary decision and order in this case.

The record shows that applicant has paid a total of 96.06 as the cost of acquiring the new franchise and the certificate herein sought.

The Commission cannot, by law, authorize the capitalization of the franchise involved herein or this certificate of public convenience and necessity or the right to own, operate, or enjoy such franchise or certificate of public convenience and necessity in excess of the amount (exclusive of any tax or annual charge) actually paid to the state or to a political subdivision thereof as the consideration for the grant of such franchise, certificate of public convenience and necessity, or right.

Likewise, by law, the franchise involved herein shall never be given any value before any court or other public authority in any proceeding of any character in excess of the cost to the grantee of the necessary publication and any other sum paid by it to the municipality therefor at the time of the acquisition thereof.

We submit the following form of order:

ORDER

A public hearing having been held upon the application of Southern California Edison Company Ltd. for authority to exercise the rights and privileges granted by the city of Culver City pursuant to Ordinance No. 563, adopted April 26, 1943, and it being found that public convenience and necessity so require,

It is hereby *ordered* that Southern California Edison Company Ltd. be and it is hereby granted a certificate of public convenience and necessity to exercise the rights and privileges granted by the city of Culver City pursuant to Ordinance No. 563, adopted on April 26, 1943.

The preliminary decision and order heretofore rendered in this proceeding are hereby set aside and vacated.

the old conventional steel having a tensile strength of 60,000 pounds was the only steel available and designers were compelled to pile on volume and weight to make the product stand up. But when alloy's having a tensile strength of 100,000 pounds became available the designers reduced the volume and weight of cars without sacrificing strength or utility of the manufactured product.

Just so with the steel that makes up the cores of transformers. The Cold-Rolled steel has improved magnetic qualities but must be magnetized in the proper direction which can only be done when the material is bent around the corners (as shown in Fig's 4 & 6). The Kuhlman B.I. core was the first of such constructions made available to the public which utilized the advantages of the improved qualities of Cold Rolled magnetic steel. (The old conventional construction is shown in Fig's 3 & 5).

3 Q: WHY SHOULD A PURCHASER PREFER B.I.?

A: Kuhlman started the ball-a-rolling ten years ago—and today more than 75% of all small distribution transformers (25 Kva. or smaller) are of the B.I. type or a modification which utilizes the advantages inherent in cold-rolled steel for cores.

In buying a Kuhlman B.I. core transformer you get a transformer that uses the highest grade materials available and one which uses those materials to the best advantage.

Fig. 3

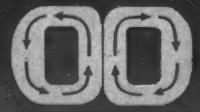


Fig. 4

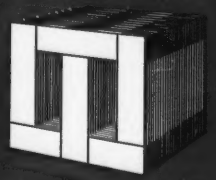


Fig. 5

Fig. 6

KUHLMAN ELECTRIC CO.

BAY CITY • MICHIGAN

3 QUESTIONS

AND ANSWERS THAT EVERY ALERT ENGINEER WILL APPRECIATE

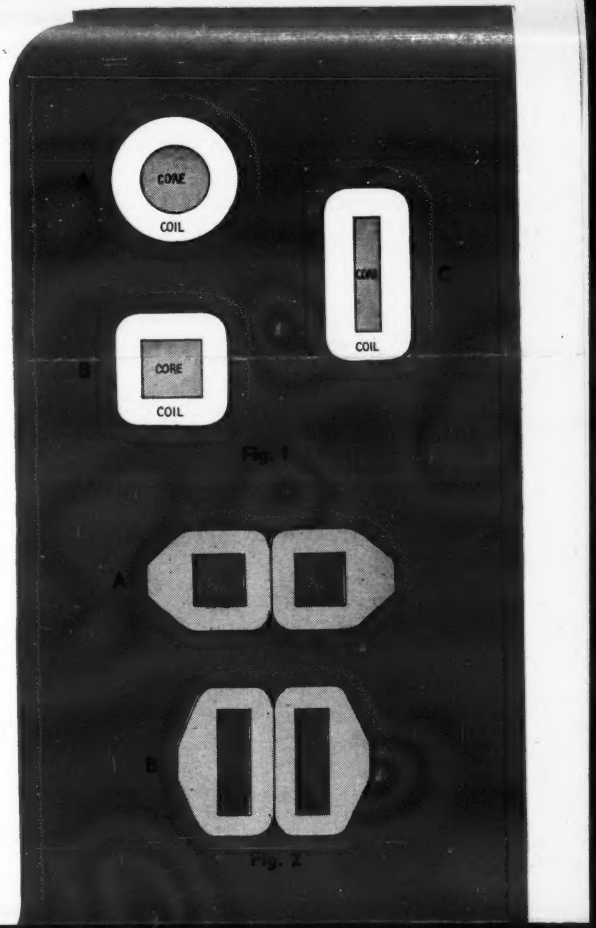
1 Q: WHY IS THE KUHLMAN CONSTRUCTION OF B.I. (BENT IRON) CORE TO BE PREFERRED FOR SMALL SIZES?

A: A designer of a Kuhlman B.I. Transformer is not handcuffed. He may use any shape of core—Round—Square—or Rectangular, (as shown in Fig. 1 A, B & C) or any shape of window, Short—or Long, (as shown in Fig. 2 A & B,) that in his judgement fits the particular conditions.

This is a distinct advantage to the designer when certain performance characteristics must be attained. The designer is not compelled to sacrifice some other characteristics such as exciting current, reactance or excess weight.

2 Q: WHAT'S WRONG WITH THE OLD TYPE CORE?

A: In the first few years of automobile manufacturing



Industrial Progress

Selected information about products, supplies and services offered by manufacturers. Also announcements of new literature and changes in personnel.

All-aluminum Ladder Offered

THE Duo-Safety Ladder Corporation of Oshkosh, Wisconsin, announces the availability of the new Type "F" industrial all-aluminum (duralumin) ladder. Among the advantages claimed by the manufacturer are its sturdy indestructible construction and light weight, as well as the fact that it is nonmagnetic, nonsparking, and nontoxic.

If used for maintenance work, where ladders are subjected to contact with electrical outlets, insulating boots FW-1 and FW-2 have been designed as accessories to Type "F" ladders. The rubber in these boots, it is claimed, is sufficiently heavy to withstand high voltages and will provide ample insulation. No. FW-1 fits over the rounded top end of Type "F" ladders. No. FW-2 fits over the bottom of the ladder.

Additional information concerning the new Type "F" ladder and accesories may be obtained from the company.

New Cutting Tool Catalog

The Robert H. Clark Company, manufacturers of Clark cutters, announces the release of a new adjustable cutting tool catalog (No. 44). Printed in two colors and illustrated with diagrams and photos of actual operations, the catalog contains complete specifications and prices, as well as detailed descriptions of the entire line of Clark adjustable cutting tools.

Copies may be had by writing Robert H. Clark Company, 9330 Santa Monica Blvd., Beverly Hills, California.

Elliott Appointments

THE appointment of Frank H. Stohr as assistant to the president of Elliott Company, Jeannette, Pa., is announced by Grant B. Shipley, president, on behalf of the board of directors.

With Westinghouse Electric & Manufacturing Company since his graduation in electrical engineering from the University of Iowa in 1922, Mr. Stohr was made manager of the generator sales section in 1926. Successively, he became sales manager of the generating division, manager of the generating and transportation manufacturing division, and manager of the industry sales department in 1939, which position he held until joining Elliott Company.

The election of R. W. Owens as vice president in charge of manufacturing at Elliott Company, is also announced by Mr. Shipley. Mr. Owens joined Elliott Company as assistant to the president in February, 1944, having previously had a wide experience of some twenty-eight years in the design and manufacture of electrical products.

New Expansion Fitting Unit

WHAT is stated to be an entirely new idea in expansion fittings has been introduced by the O. Z. Electrical Manufacturing Co., of Brooklyn, N. Y. It is known as Type "TX" and is a complete unit espcecially designed for thin wall conduit to compensate for expansion and contraction in a line of conduit. It is furnished with extension nipples already in place for quick, easy installation on conduit (E.M.T.) in sizes from ½ in. to 2 in. Special packing seals the head and effectively prevents water or moisture from entering.

Complete details of this and other new products, together with the regular O. Z. line, are given in a new 140-page catalog.

Ohio Brass Appointments

W. A. SMITH, who has been chief engineer of the Barberton division of the Ohio Brass Co. for nearly 15 years, has been appointed consulting engineer. He will be succeeded by J. J. Taylor, former assistant chief engineer.

Westinghouse Full Line Folder

A FULL line folder in four colors showing one model each of the 22 types of prewar Westinghouse electric appliances is being packaged with each of the new irons Westinghouse is now manufacturing, to presell consumers now on the company's postwar appliances. This folder is also available to Westinghouse appliance retailers through the company's distributors and the Westinghouse Electric Supply Company.

Folding to fit into a No. 10 business envel-

ope, the cover of the folder carries the title, "For Better Living in the American Way—Special Exhibit Inside." It is designed for direct mail promotion or pass-out distribution to tie in with the current Westinghouse advertising campaign theme that, "30 Million Pre-War Westinghouse Electric Home Appliances Are Your Postwar Promise of Still Finer Ones to Come."

Regalvanizing of Welded Joints Now Possible

THE application of welding to the design of an outdoor substation structure and all the advantages thereof has been made practical by what is known as the Galv-Weld Process according to Galv-Weld Products, 406 E. 2nd St., Dayton 10, Ohio.

Conventional substation structures, as most outdoor electric power equipment, have been designed for bolted construction utilizing galvanized steel members. This type of construction has been necessarily used in the past because no means were available to regalvanize the welds made in galvanized members in order to protect them from rust.

The Galv-Weld Process, the manufacturer claims, makes it feasible for the first time to regalvanize welded joints in galvanized structural steel, leaving the entire welded structure rust and corrosion proof.

Complete information regarding this process may be had by writing to Galv-Weld Products.

Addressograph-Multigraph Appointments

POINTING toward larger postwar foreign markets, Addressograph-Multigraph Corporation announced the appointment of Guy W. Davis to make a survey of Latin American markets and D. C. Adams to manager of its Cleveland export department.

Mr. Davis, who has been promoted to special representative of D. E. White, vice president of the office equipment manufacturing company, will leave soon for South America. He was graduated from Northwestern University and prior to joining the Cleveland company was an industrial engineer and merchandising counselor.

Mr. Adams will work with the export sales organization in his new assignment. He was graduated from Yale University and joined Addressograph-Multigraph in 1937, working in the export division after completing a technical training course.

New Therm-O-Flake Gun Saves 85% Man-hours

POWER plant operators will be interested in a new gun designed to speed up the sealing and insulating of refractory walls.

This gun syphons dry "Therm-O-Flake" insulation direct from the shipping carton, mixes with water and sprays to the refractory wall in one operation. Premixing is eliminated. Application is claimed to be 6 to 8 times faster than by manual methods.

The "Therm-O-Flake" gun operates on standard air and water pressures. It weighs but 4 pounds and can be moved about easily. Units are shipped complete with 15-foot sections of air, water and vacuum hose and all necessary valves and fittings.

Literature and complete details may be obtained from the Illinois Clay Products Company, 608 South Dearborn Street, Chicago 5, Illinois.

Street Lighting Plan Book Distributed as Guide

AS part of the street and suburban lighting industry promotion campaign for the remainder of 1944, the street lighting section of National Electrical Manufacturers Association has begun the distribution of a "Suggested Street Lighting Plan Book for Utilities."

In sending the plan book to utility execu-

tives, street lighting experts, and other specialists, V. J. Lajeunesse, chairman of the section, called their attention to the broad aspects of the program to be carried on in the seemingly short period still remaining of "postwar planning." He stated it would contain many individual helps both for utility men and city officials.

"There has been much talk of utilities preparing street lighting manuals," he said, "as one of the means of bringing in business to use excess power after the war. Street lighting in normal times uses only about two per cent of the generated kilowatt hours but this would be quadrupled if every street were lighted to the standards set by the Illuminating Engineering Society. Well lighted streets will also bring about large increases in the lighting of show windows, signs, stores and even homes."

The book is divided into 11 main sections which discuss present conditions, importance of visibility, benefits of good street lighting with supporting evidence, benefits of good highway lighting with supporting evidence, the preparation of street and highway plans, specifications, layouts, as well as negotiating procedure.

One copy of the lighting plan book is being sent to each of the executives and street lighting specialists of all utilities with the compliments of the street lighting section of National Electrical Manufacturers Association. Additional copies are available on an actual production cost basis—$1 each—from NEMA, 155 East 44th Street, New York 17, New York.

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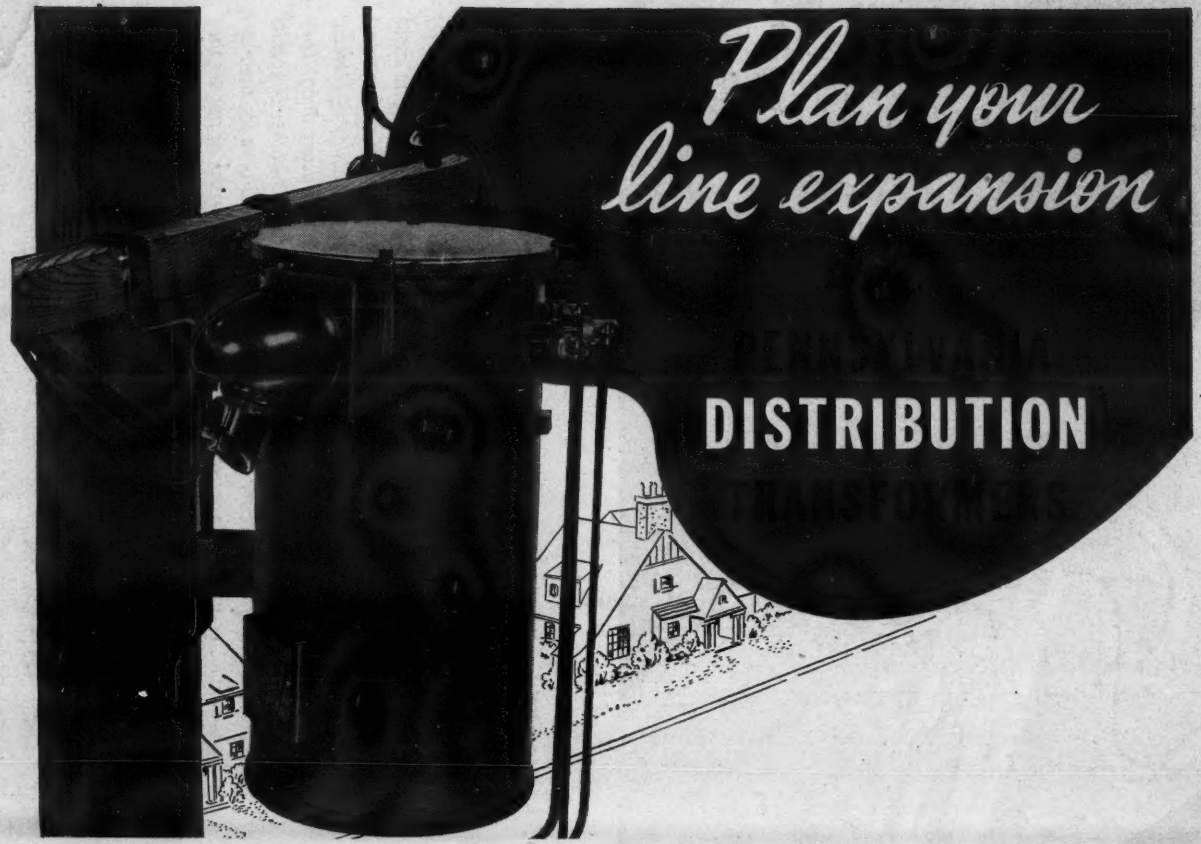

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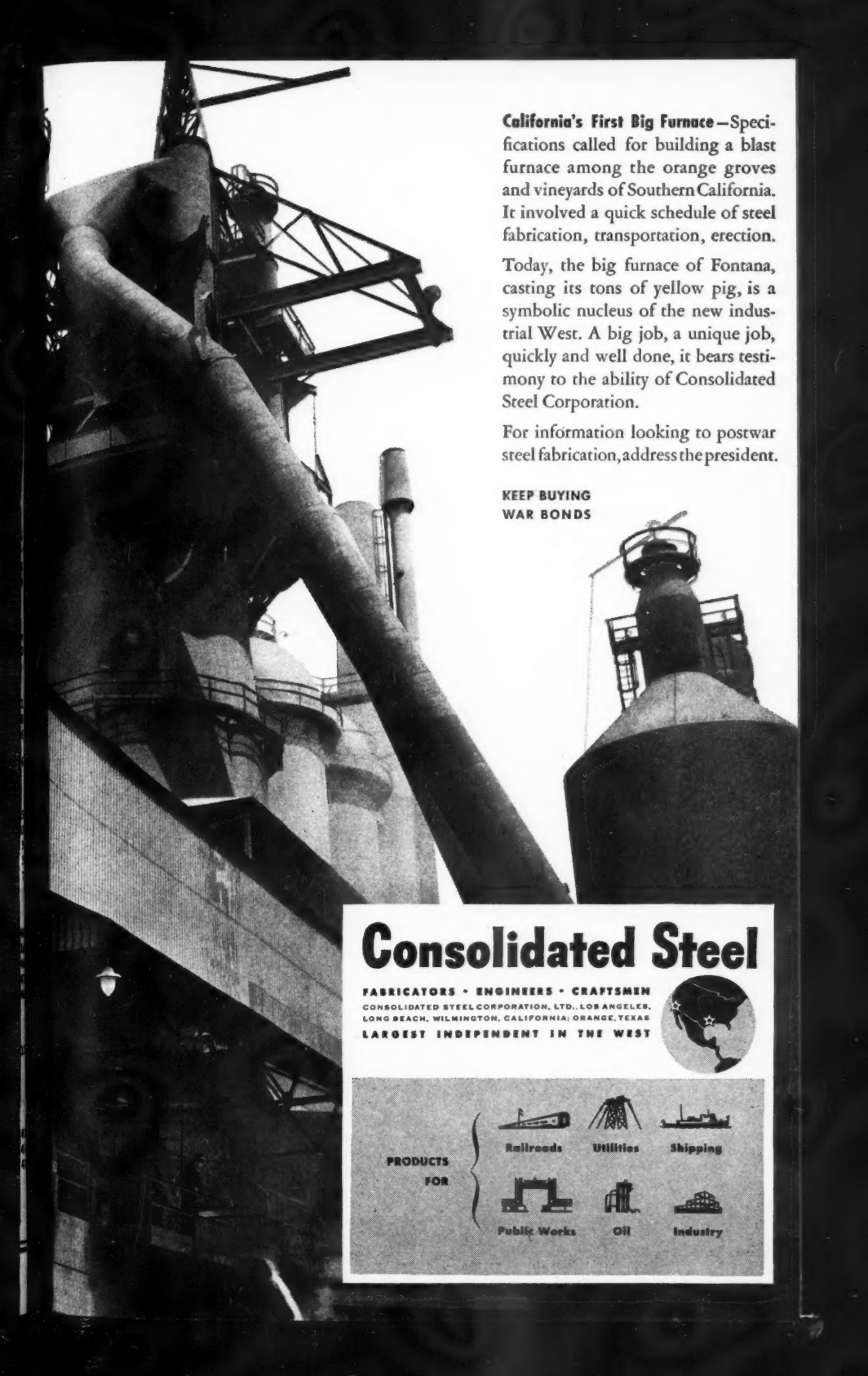

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